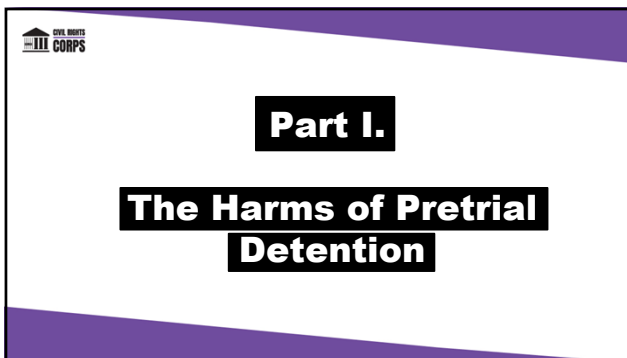
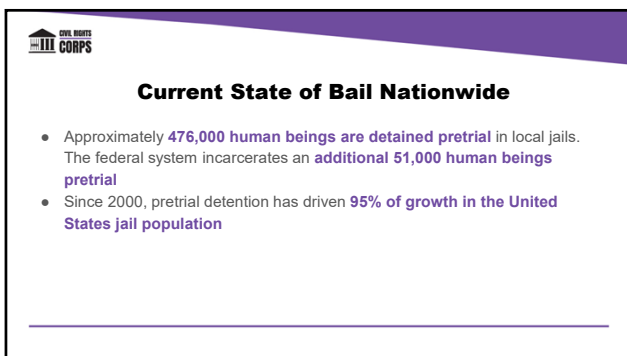





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3



People Lose Their Jobs & Housing

- A recent study found that **three to four years after a bail hearing**, people arrested who are not released are 9.4% less likely to be formally employed
- Even just a few days in jail can completely destabilize a person's life, and can lead to increased risk of arrest in the future by up to 40%.


4



Racial Disparities

- One study found that black men receive money bail that is **35% higher on average**, while Hispanic men receive money bail that is **19% higher on average**
- Money bail amounts for black people who are arrested are **\$7,000 higher** for violent crimes and **\$13,000 higher** for drug crimes.
- Another study revealed that black people who are arrested were **66% more likely** than white counterparts to be jailed pretrial.


5



Coerced Guilty Pleas & Longer Sentences

- People detained before trial are in danger of losing jobs, access to healthcare, children, and housing – enormous pressure to plead guilty just to get out and return to their lives
- Before the lawsuit in Harris County, pretrial detainees were **25% more likely to plead guilty** than those who paid for release.
- Sentences of people detained pretrial **are almost 3x as long** for people sentenced to jail, and **more than 2x as long** for those sentenced to prison


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Reduced Public Safety

- Money bail proponents claim the system serves two purposes – **ensuring court appearance and keeping the community safe**
- The empirical evidence proves that non-financial conditions are more effective than money bail at improving court appearance and public safety
- People arrested who Harris County classified as “low risk” who are detained on money bail – even for 2-3 days – are **40% more likely to commit new crimes in the future.**


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Mass Incarceration

- The United States has **five percent of the world's population, but nearly 25% of the world's prisoners**
- At least another **4.5 million** are under probation and parole supervision
- A majority of people charged with crimes are so poor they cannot afford a lawyer
- 25 years into America's incarceration boom, black people were incarcerated at a rate **six times that of South Africa during apartheid**


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Alternatives to Cash: New Jersey

- **New Jersey:** Money bail eliminated in **January 2017**
- Pretrial population **dropped by over 30%** in the last three years, while violent crime fell by 30% at the same time
- Almost **90%** of defendants appear for court
- New Jersey currently has an extremely **low rate of pretrial detention of 5.7%**


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Alternatives to Money Bail: Washington D.C.

- Washington DC **releases more than 94% of people** accused of crimes,
- **over 99%** are not rearrested for a new violent crime while on release, and
- **nearly 90%** make all court appearances.


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Alternatives to Money Bail: Harris County

- Prior to the settlement of Civil Rights Corps's lawsuit challenging money bail in misdemeanor cases 92% of misdemeanor cases had a secured bond set, which resulted in high rates of pretrial detention. **In 2020 only 14% had secured bond.**
- 86% of misdemeanor defendants now spend 2 or fewer days in jail.
- No negative impacts on public safety.


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Part II.

National Bail Litigation


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Constitutional Arguments

- **Equal Protection and Due Process Clauses** of the 14th Amendment
- Violates **Equal Protection** to jail someone simply because of their inability to make a monetary payment (*Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983))
- People have a **fundamental right to pretrial liberty** (*United States v. Salerno*, 481 U.S. 739, 755 (1987))

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Constitutional Arguments

An unaffordable money bail IS an order of detention

- It is a condition of release that is impossible to meet.
- The equivalent of requiring the Defendant to run a two-minute mile in order to be released.


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Constitutional Arguments

- Before a presumed innocent person can be jailed prior to trial:
 - There must be a **rigorous hearing with a lawyer**
 - Opportunity to **present and confront evidence**
 - **Clear findings** of the reasons that detention was necessary to protect a compelling state interest supported by clear and convincing evidence
 - Must include determination that no other conditions would protect state interest


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Constitutional Arguments

- **Right to Counsel:** 6th Amendment
- People have a right to counsel at all critical stages of their case, includes hearings where one's liberty is at issue like the Initial and First Appearances.
- "[T]here can really be no question that an initial bail hearing should be considered a critical stage." *Booth v. Galveston Cty.*, 352 F.Supp.3d 718, 738 (S.D. Tex. 2019); *see also Higazy v. Templeton*, 505 F.3d 161, 172 (2d Cir. 2007); *Caliste*, 329 F.Supp.3d at 314.

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Constitutional Arguments

Examples of Cases Where Money Bail Practices Have been Struck Down

- State Supreme Courts: *In Re Humphrey*, 482 P.3d 1008 (Cal. 2021); *Valdez-Jimenez v. Eighth Judicial District Ct.*, 460 P.3d 976, 980, 987 (Nev. 2020).
- Some of the Federal Court Decisions: *ODonnell v. Harris County*, 892 F.3d 147 (5th Cir. 2018); *Caliste v. Cantrell*, 329 F. Supp. 3d 296 (E.D. La. 2018), *aff'd*, 937 F.3d 525 (5th Cir. 2019); *McNeil v. Cmty. Prob. Servs., LLC*, 2019 WL 633012, at *15 (M.D. Tenn. Feb. 14, 2019), *aff'd*, 945 F.3d 991 (6th Cir. 2019).

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Part III.

Alamance: *Allison v. Allen*

ACLU-NC/ACLU/CRC

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Key Allegations in the Complaint

- Filed November 12, 2019 against judges and the sheriff
- The judicial defendants and Alamance County routinely jail people simply because they are too poor to pay the amount of money bond required for their release. These operate as *de facto* detention orders.
- These money bonds are set at Initial Appearance in very brief hearings without counsel or any other meaningful due process (e.g. no ability to present argument, no individual findings of ability to pay or the necessity of detention).


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Key Allegations in the Complaint

- Once a financial condition is imposed by a magistrate those who can pay are released immediately and those you cannot pay must remain in jail for days, weeks, or even a month before they have the opportunity to request alternative conditions of release.
- The First Appearance often occurs more than 48 hours after arrest and regardless there is no opportunity to request a modification to conditions of release.


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Preliminary Injunction

- Judicial and County Defendants consented to the entry of a preliminary injunction which was entered on May 8, 2020. It is **NOT** a final resolution to the lawsuit.
- All people detained after Initial Appearance are entitled to a hearing **with counsel** no later than 48 hours after arrest or at the next available court session to determine conditions of release.


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Preliminary Injunction

- If a secured financial condition is required there must be an individualized hearing on ability to pay.
- Rebuttable presumption that someone cannot pay secured bond that exceeds more than 2% of monthly income
- Rebuttable presumption that a person is unable to pay any secured bond if they are eligible for appointed counsel, make less than 200% of the federal poverty level, or receives certain means tested public benefits.

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Preliminary Injunction

- If it is determined the individual cannot afford the bond, a judge may only issue a de facto or transparent detention order if they find by clear and convincing evidence that detention is necessary after considering alternative conditions at a hearing with counsel and the opportunity to present argument and evidence.
- Must make written findings


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Part IV.

How Can All This Help Your Clients


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Federal or State Habeas

- Do you have a client in jail pretrial on unaffordable bond? Inability to *pay=de facto* detention order
- Did the judge make findings about the necessity of detention or consider alternatives conditions of release?
- Then Preserve your legal arguments and make a record
- Can use either Federal or State Habeas

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State Law Arguments

- Official commentary to § 15A-534, our state pretrial release statute “expressly favor[s] the policy that pretrial release of the defendant should be effected under the three conditions that *do not depend upon the defendant’s financial condition*” See Official Commentary to N.C. Gen. Stat. § 15A-534 (emphasis added)
- Only where the judicial official determines that such conditions of release will not satisfy state interests can a judicial official impose (4) a secured bond or (5) an ankle monitor be imposed. N.C. Gen. Stat. § 15A-534(b).

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A good factual record

The client’s story

Client not a danger


Challenge State’s proffers

Client not a flight risk

Inability to pay

Alternatives to detention


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How Can Civil Rights Corps and ACLU-NC Help?

- Provide template language necessary to preserve federal constitutional claims and sample pleadings
- Can help with state appeals
- Can handle Federal or State Habeas litigation

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