

In Our Backyards: *Money Bail in Rural Tennessee*

Bail in Rural Tennessee: *Our neighbors, our stories*



Locking up people before trial because they cannot afford to pay bail is a leading cause of mass incarceration in Tennessee and its impact is devastating for people who live in our state’s rural communities. Half of the nearly 30,000 people sitting in our state’s county jails are pretrial detainees who are legally presumed innocent and are eligible for release. But because they cannot afford to pay a monetary bail amount set by a judge or magistrate, they instead languish behind bars while awaiting trial, often for low-level offenses.

Being incarcerated pretrial can have a life-altering snowball effect, as many working Tennesseans lose their jobs or face eviction because they are unable to make bail and return to their homes and places of employment. Others face the terrifying possibility of losing custody of their children while they wait for their day in court.

While bail is a driver of mass incarceration statewide, its impact on rural communities is, in many cases, more severe than it is in Tennessee’s city centers. From 2000 to 2016, the pretrial incarceration rate increased 163% in the state’s 53 rural counties, compared to an increase of only 2% in the state’s urban counties. While larger, more densely populated counties logically have more people in their jails, in recent years small cities and rural counties in Tennessee have been those with the highest rates of incarceration per capita.

Money bail has created a two-tiered justice system in our state, where Tennesseans who have limited incomes – particularly those who live in rural communities – are punished more harshly than their neighbors who have access to resources and money.

Over the past two years, ACLU-TN traveled to three rural communities across the state – McMinn County in East Tennessee, Warren County in Middle Tennessee, and Obion County in West Tennessee – to meet with and learn from people who had seen, first-hand, how unfair pretrial practices had hurt them or others in their towns. These individuals bravely agreed to share their stories and lend their expertise and experience to better help people across Tennessee – from community members in rural, suburban, and urban settings to state lawmakers considering legislative reforms – to understand the dangerous, ineffective, and predatory ways the bail system hurts their neighbors.

These are their stories.

Since 2000, the pretrial incarceration rate has increased 163% in the state’s 53 rural counties, compared to an increase of only 2% in the state’s urban counties.

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ABOUT THE ACLU OF TENNESSEE

First organized in 1968, the American Civil Liberties Union of Tennessee (ACLU-TN) is a statewide, private, non-partisan, non-profit membership organization dedicated to translating the guarantees of the Bill of Rights into reality for all Tennesseans.

ACLU-TN uses an integrative advocacy model – including advocacy, legislative lobbying, litigation, organizing, public education and storytelling – to strategically pursue its mission to protect all of our constitutional rights. ACLU-TN advocates to reduce mass incarceration in our state and to ensure racial and economic equity for everyone who engages with the criminal justice system.

The principal author of this report is Claire Gardner, ACLU-TN senior community engagement strategist. Special thanks to ACLU-TN staff, including Thomas H. Castelli, Lindsay Kee, Helen Mrema, Jack Seigenthaler, Brandon Tucker, Hedy Weinberg, and Stella Yarbro, and interns Salwa Daouk, Elia Despradel, Jamie Fisher, JanieLynn Lankford, Ella Paligo and Nilam Patel, for their invaluable guidance and contributions to the project and report.

We would also like to thank our storytellers: Stephen Dick, Nikola, Jessica, Deborah Evans, John Partin, Bill Randolph, Selina Williams, Brannon Powell and Judge Jimmy Smith, for sharing their experiences. We thank the Vera Institute of Justice and the members of the “In Our Backyards” community cohort for their support, guidance and partnership during this project.

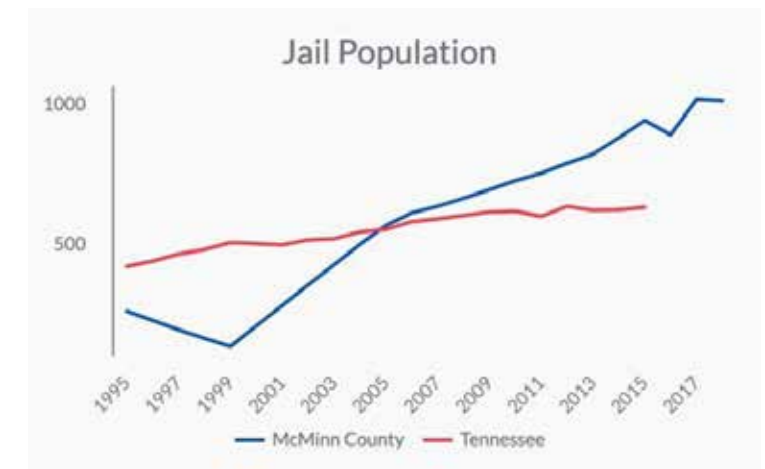
McMinn County, Tennessee



banned from an establishment or they are unclear about which spaces from which they have been banned, which can lead to their arrest and a high bond being set.

Community members in McMinn County also cited the prevalent addiction problems in the county, with 13.2% of the population¹¹ struggling with alcohol abuse and an opioid prescription rate of 1,183 per 1,000 McMinn County residents.¹²

As our storytellers demonstrated with conviction and clarity, the relationship between not having access to housing, addiction and incarceration in Athens and the larger McMinn County community is a toxic and hopeless cycle, from which those with low incomes or those living in poverty see no escape.



Source: The Vera Institute of Justice

The first community ACLU-TN visited was East Tennessee's McMinn County, an hour's drive southwest of Knoxville and home to 54,000 Tennesseans.¹ Like other rural counties in our state, in recent years, pretrial detention has continued to steadily creep up, leading to overcrowding in the expansive McMinn County Justice Center.

In 2018,² the pretrial detention rate in McMinn County was 1.6 times higher than Tennessee's rate of pretrial incarceration and 2.6 times higher than the national rate. In June of 2021, 62% of people incarcerated in the McMinn County jail were being detained pretrial.³ A year and a half earlier, the jail had been above 100% capacity,⁴ which led to many inmates having to sleep on the floor because of overcrowding – a common, repeated occurrence, according to the people with whom we spoke when we visited Athens.

In keeping with a statewide trend, McMinn County's incarcerated population is disproportionately Black. Of the three counties we visited for this project, McMinn County had the highest rate of incarceration for Black people,⁵ with 3,852 per 100,000 Black residents being incarcerated – compared to the incarceration rate for white people: just 931 per 100,000 residents. Black people made up only 3.9% of McMinn County's total population⁶ but constituted 15.6% of its jail population⁷ in 2018, the most recent year that these data points were publicly available.

Additionally, like many rural counties in our state, McMinn County struggles with poverty. The county faces a poverty rate of 14.5%,⁸ and the small county seat, Athens, has more than 60⁹ unhoused residents. As we learned in our visit to Athens, one of the myriad challenges people who are struggling with being unhoused in McMinn County face is the fear of incarceration, including the practice of being charged with criminal trespassing.¹⁰ According to those with whom we spoke, some people in Athens who are unhoused do not receive notice that they have been



STEPHEN

“I’ve kind of had a lucky life,” Stephen says as he sits by the window in the St. Paul’s Community Outreach Center on South Jackson Street, a framed poster bearing the Narcotics Anonymous gratitude prayer — “My gratitude speaks when I care and when I share with others ...” — hanging behind him.

“The difficulties in my life were of my own making ... I’m talking about the addiction issues there. My track coach used to say, ‘You learn a lot more by losing than winning.’ And I’ve learned more from being an addict in recovery than anything else in my life.”

Stephen moved to Athens in the late 1980’s to teach English at Athens Junior High School, where he also coached the cross country and track teams. He became a fixture in the small town’s education community, serving a few terms as president of the Athens Education Association and even winning “Teacher of the Year” once, a distinction he mentions with pride.

But eventually, tensions with the administration and the overload of standardized testing left him feeling burnt out, and he decided to retire from the profession.

That was when things started to unravel.

“When I left teaching,” Stephen explains, “what I didn’t understand was how much I’d miss the kids ... it was just like a gigantic hole in my life. I didn’t know how to replace it. And the alcoholism just got worse and worse.”

Almost immediately, what Stephen refers to as years-long functional alcoholism morphed into full-blown alcoholism that quickly derailed his life. Over a few years, Stephen was arrested three times for driving under the influence. But unlike so many in the justice system, Stephen’s financial security gave him a leg up: Each time he was arrested, he was able to make his \$500 bond and go home, hire an attorney, and prepare for his day in court.

“The bail bonding system, if you have the money, then you can get out real quickly and then you can hire a lawyer while the iron’s still hot. That lawyer has a good chance of getting the best result possible. If you can’t pay a bond, then you’re stuck in jail.”

Ultimately, he served a total of 100 hours in jail — although he admits that to hear him talk

about his disillusionment with the jail system, you’d think he’d been in much longer. And later, during his probationary period, he learned again how access to money gave him an advantage in the system: when he was making his monthly probation payment, the clerk told him that if he had the money, he could just pay off his entire probation then and there and be done with it.

“Well until that point, nobody had told me that. I’d like to think they just assumed since I was on probation, I didn’t have any money,” he explains. He easily made the payment in full. “I paid to get off probation and never received any kind of counseling or rehabilitation — anything like that.” The purpose of the probation, he realized, hadn’t been to prepare him to successfully re-enter society or prevent him from reoffending and ending up back in jail.

It had been about money.

After his experience in the jail, Stephen worked to stop drinking. But not long after finally quitting, a friend offered him a pill — ten milligrams of hydrocodone — to ease Stephen’s low-level back pain. Stephen took it. “It did absolutely nothing for the pain — nothing at all. With the alcohol it took decades for my addiction to fully develop. It took one opioid pill to addict me.”

He soon found he was part of a larger trend, like so many of his neighbors in Athens and people across the nation: the opioid crisis.

“Of the ten counties in the United States that have the highest rate of opioid addiction, three of those counties are in Tennessee,” he says. In McMinn County and the surrounding areas, “a lot of the pain clinics have closed. What you’re seeing in Athens right now is because pills are harder to get [and] they cost more, then you have the unintended consequence of heroin and fentanyl.”

Stephen has educated himself on the ties between the country’s current mass incarceration crisis and the so-called War on Drugs, the policies first implemented by the Nixon administrations in the 1970s that have pumped hundreds of billions of dollars into law enforcement, led to the incarceration of millions of people — disproportionately Black — and done nothing to prevent drug overdoses. As widespread addiction rates have soared in rural, predominantly white communities, contemporary attitudes have shifted from describing addiction as a criminal justice issue toward describing it as a health crisis, a shift Stephen readily acknowledges is rooted in systemic racism. But still, the community in Athens, he says, is being pummeled by addiction, and those who struggle with addiction are often the same ones who are getting caught in the maze of the criminal justice system.

Just as he had fought to overcome his addiction to alcohol, Stephen fought to end his reliance on opioids and soon found help and community in the local Narcotics Anonymous chapter at St. Paul’s. As he overcame his addiction, he became a fixture in Athens’s recovery community, just as he’d been a fixture in its education community. Sitting in the meeting rooms at St. Paul’s, he quickly realized how drastically different his experience with the justice system had been from most of the people seated in the chairs next to him.

Again, the difference, he realized, was money.

For the people at the meetings with him, the money-based incarceration system only compounded the difficulty of getting sober. The endless cycle of the incarceration system seemed to feed on people suffering from addiction. “You know, just being in these rooms over the last six years, I’ve just heard so many stories about incarceration,” Stephen shares. “People get out of jail, they’re addicts, it’s hard to get a job, you can’t live in public housing until you have years of quote-unquote ‘good behavior.’ We let people out and there are no services... [The system] is set up to keep the rich, rich and to keep the poor, poor. There are all kinds of rules ... they reinforce those cycles.”

Even though his own days in the criminal justice system were long behind him, Stephen is still

dealing with the impact of the bail system. When his brother Joe was arrested for a drunk driving incident in 2018, Stephen and his friends were able to pull together to find \$5,000 to bond Joe out of jail. But then the judge tripled Joe's bail and the bond increased to \$15,000, and Stephen couldn't pull together that kind of cash. Fearing for his brother's health while he languished in jail, Stephen was forced to sell his childhood home to post the bond and pay lawyer's fees.

As painful as it was to part with his family's home, and as fearful as he is for his brother's future, he realizes that not everyone in his community is able to pull together the money to go home while they wait for their day in court. And even if they can, he knows from experience that for so many of them, the cycle of incarceration and addiction will just keep feeding itself, with no escape in sight.

He sits now in the familiar meeting room of St. Paul's and a group of men – most of whom, Stephen observes, have been in and out of the criminal justice system for years – has gathered on the front porch, waiting for Stephen to finish his interview so they can come inside for that afternoon's NA meeting. They talk jovially amongst themselves as Stephen collects his thoughts.

"Albert Einstein said that hatred is a failure of the imagination," Stephen reflects. "When it comes to mass incarceration and to addiction, people say, 'Oh, that can't happen to me. They're bad people' or 'They'll have to lift themselves up by their own bootstraps.' I think what Einstein is talking about is the imagination [to] try to understand... how none of us are as far away as we think from that position."

Outside, the laughter of the men grows louder. It's almost time for the meeting to start.

Stephen glances out the window at them, his eyes filling with tears as he works to keep his voice steady.

"I wish people would imagine," he continues, "I wish they would heed what Albert Einstein said. We're all just a step away. I know from doing free lunches and being in twelve-step meetings that a lot of people's lives are being discarded, who face an uphill battle that most of them are not going to make."

He takes a deep breath, his voice catching in his throat. "But they have enormous value. Every single one of them."



NIKOLA

Nikola didn't think they had it so bad in the woods, all things considered. She'd loved camping when she was a kid, after all, and she and her boyfriend, James, had tried to keep up a good outlook, hanging mosquito netting and hauling out water. They'd even gotten a solar shower set up.

"We had a mansion out there," she jokes.

Nikola, a union iron worker by trade, had moved to Athens in 2004 and raised two of her children there – her daughter, she proudly shares, graduated from McMinn High School with a 4.667 GPA. But after a decade in the town, Nikola's life changed dramatically: In 2014 she found out she had cancer and soon couldn't work. James suffered a traumatic brain injury and also couldn't work. Things kept piling up. Within five years, she'd lost her home, joining the county's quickly growing population of people who are unhoused.

In 2018, on any given night, more than 60 people in the town of Athens could be described as unhoused. With a population of around 13,600 residents total, this makes the rate of people who are unhoused per capita higher than that of Chattanooga, the fourth largest city in the state. Nikola and James were just the newest members of that quickly-growing population.

For the first few weeks, she and James tried living in her truck. Then they moved into a storage unit they rented. Finally, they set up a campsite in a wooded area off Decatur Pike in Athens, nestled between a Baptist church and the local Walmart Supercenter.

"That's just the way this town is. Once they're on you, they're gonna constantly be on you. And I'm telling you, that's exactly the way that it was."

That was around the time Nikola started getting banned from private property.

She was confused when the officers first told her she was banned from the shopping center where she was looking for food and blankets in a parking lot dumpster. At first, she thought they were mistaken. But as rates of people who are unhoused in Athens rose, local law enforcement was using authorizations of authorities, or AOAs, to make criminal trespass arrests, and doing so more and more frequently. The AOAs allowed a business owner to request that a person be put on a trespass list with the local police. If the police found a person at that business, they could issue a citation or, if the person returned, arrest them for trespass. That way, the owners of the business didn't need to call the police or even need to know that the banned person was on the property for the so-called criminal trespasser to be taken to jail. More and more frequently, Nikola observed, members of Athens's homeless community were the ones getting arrested.

After a series of stressful and frightening interactions with local law enforcement that left Nikola feeling unclear and confused about where exactly she was allowed and not allowed to be, she was charged with criminal trespassing while looking in the dumpster behind the local Verizon store for boxes to use for storage. Her bail was set for \$27,000. Coming up with \$2,700 to make her bond and get out of jail was out of the question. So she stayed in.

At first, Nikola was adamant that she hadn't done anything wrong and planned on pleading not guilty. While she was new to the criminal justice system and found court confusing and

humiliating, she was warned not to resist. “Everybody in the jail was like, ‘You don’t need to argue with [the judge],’” she recalls. “‘You don’t need to stand up to him because you’re gonna be in here longer. Just go along with the program. Do your time, and just get out of town.’ That’s just the way this town is. Once they’re on you, they’re gonna constantly be on you. And I’m telling you, that’s exactly the way that it was.”

She decided to plead guilty. And the people in the jail were right: the police were on her then – constantly.

It now seemed like every interaction she had with an officer ended with her learning that there was another place she couldn’t be. First the shopping center. Then the Goodwill. Next the Verizon store. The K-mart. And she’d find out she was no longer welcome when a police or sheriff’s cruiser would pull up and, terrified, she would learn that she’d been banned. First she’d get a ticket, and then, if they found her there again, an arrest. And that meant more bail she couldn’t afford and more time in jail.

Another time she went to jail for criminal trespassing and couldn’t make her \$2,200 bond, Nikola’s truck sat in the Goodwill parking lot for four days before being impounded. When she finally got out, she was told it would cost her another \$3,000 to get the truck back. With the help of her social worker, Nikola managed to negotiate the fee down to \$500 — still an astronomical amount that pushed her even further into poverty.

Those weren’t the only expenses that came with getting arrested, she quickly learned. When you’re in jail and trying to make bail, Nikola explains, “you make calls to your family, trying to get this big bond money from them. You’re calling 20 - 30 different people, and by this time, you’re calling collect. So you’ve got another \$300 - \$400 in phone calls — that is a debt. It just wears you out. You just can’t imagine ... So you’re just sitting there, okay? That’s it. There’s no hope.”

The cycle of bans, arrests and jail time continued. By the last weeks of 2019, Nikola had reached her breaking point.

On December 21, Nikola was back out behind the Verizon store, once again trying to find supplies in the dumpster. And once again, she was soon joined by a police officer who was ready to arrest her.

“Please don’t arrest me,” she remembers pleading, “because it’s four days before Christmas.”

“Well,” she says he replied, “you’ll be able to bond out.”

But Nikola knew that wouldn’t happen.

That night, after she’d been booked at the Justice Center, Nikola told the other women there that she wanted to commit suicide. Sitting in the jail’s infirmary, she broke down, telling the nurse interviewing her that she was physically and emotionally exhausted. “I’m sick and tired of running. I’m sick and tired of cops coming to get me. I’m not working. I don’t have the money to bond myself out. I just feel like a total loser. I’m just tired.”

She remembers how desperate she felt that night. “When you’re broke like that and you’re in jail, you can’t bond out. And you know that your kids are taken away, your job’s gone, your house is gone ... What do you have to live for?”

Just as she’d told the officer who arrested her, Nikola couldn’t make bail. She was incarcerated for 23 days. She spent Christmas in jail.

Once she was out, Nikola had missed Christmas with James, but she hadn’t missed winter or the cold. As temperatures dropped, Nikola, like many of the people in Athens who don’t have homes, was worried about going to one of the local cold weather houses. The people at the shelter would offer help, food and warmth, but there were rumors that the local cops were keeping tabs on who showed up because they didn’t have anywhere else to stay. If you were unhoused and went to the shelter to stay warm, it was said, the cops would be on you now. And they’d be on you constantly.

For Nikola and others, it felt safer to risk the cold.

“WHEN YOU’RE BROKE AND IN JAIL, YOU CAN’T BOND OUT, AND YOUR KIDS ARE TAKEN AWAY, YOUR JOB’S GONE, YOUR HOUSE IS GONE ...
WHAT DO YOU HAVE TO LIVE FOR?”

—Nikola, McMinn County

JESSICA

When Jessica remembers the McMinn County Justice Center, she remembers the cold and she remembers her socks.

She describes the tiny, cramped pod where she was incarcerated as “a meat locker,” it was kept so cold. She remembers having to snuggle up to other women in her pod to stay warm at night, but at least at that point she had a bed. For the first two months of her sentence, the jail was so



overbooked that she slept on the floor. By the time she'd earned a bunk by what she calls her “seniority,” she felt lucky to have gotten a full blanket. But at least she could count on her podmates to pull together and share what little they had.

“Have you ever known what it’s like to be without a pair of socks when you’re in a meat-locker, and somebody gives you a pair of socks for your feet when they don’t know if their socks are gonna come back from the laundry or not?” she asks, her eyes growing wide with emotion.

Many of them, like Jessica, were mothers. And many of them, also like Jessica, were in the Justice Center to serve an automatic, no-bond-offered, six-month sentence for failing to afford to pay child support, an all-too-common reason that many parents in Athens and the surrounding communities found themselves at MCJC.

That was the kind of bond she formed with the other women locked up alongside her – women lending each other a shoulder to cry on, sharing food. Sharing blankets. Sharing socks. The kinds of things mothers provide to their children.

The six-month stint for child support wasn’t Jessica’s first time being locked up. She’d been in jail “a bunch of times,” she says, for misdemeanor offenses – public intoxication, disorderly conduct – all incidents she attributes to her lifelong battle with addiction and untreated mental illness, including borderline personality disorder and post-traumatic stress disorder. From her youth, Jessica

would try to self-medicate with drugs and alcohol. It was like a switch would get flipped inside, she explains, and she’d find herself in the backseat of a McMinn County Sheriff cruiser with another P.I. charge on her record and another \$700 bond to try to pay.

Sometimes her father would bail her out. But other times, she explains, he would “get fed up and be like, ‘no, you’re gonna sit there.’” When that happened, she’d end up losing whatever job she had at the time. Then she’d spend her time in jail waiting to be arraigned and worrying about whether or not she would be able to pay her bills.

Those jail stays were dehumanizing, she says, like her dignity had been taken away: “We feel like a piece of property when we’re bought like that,” she says. “When we’re incarcerated and can’t make bail. We feel trapped. Like rats.”

But at least, she says, she never lost her child because she couldn’t make bail, not like some of the women she met at the Justice Center. She recalls being arrested one weekend, and the fact that she happened to have enough money at that time for bail kept her family together. If she hadn’t, she would have been forced to stay in jail until being arraigned the following Monday. “Then C.P.S. would’ve taken my child and that would’ve crushed my world,” she explains. “But that didn’t happen — thank God. Thank God I got out on bond [that] time. Because it saved my life.”

“Jail gives [poor people] a debt, and that debt just keeps adding up. When you’re that poor, you can’t afford to pay the debt ... [You’re] just stuck. There’s no alternate escape. There’s no alternate funds. You’re stuck and powerless and helpless. It’s mentally paralyzing.”

A few years later, as she worked hard to put her life together – getting sober and staying in recovery, finding faith and getting involved in a local church, starting her own small business cleaning houses — Jessica learned that trying to navigate the criminal legal system without money didn’t get easier for people even after they were no longer incarcerated.

Now, struggles to pay bail morphed into struggles to pay monthly and weekly fees as part of her probation, just another bill she could hardly afford, another step in what she calls the justice system’s never-ending cycle of incarceration and debt.

For poor people, she says, “jail gives them a debt. It puts a debt over their head and that debt just keeps adding up. When you’re that poor, you can’t afford to pay the debt. It just adds up and then you add the monthly fees to it ... [You’re] just stuck. There’s no alternate escape. There’s no alternate funds. You’re stuck and powerless and helpless. It’s mentally paralyzing.”

For people in Athens who are caught up in the justice system, Jessica doesn’t mince words. “If you don’t have money, you ain’t shit, basically, is what it feels like.”

While her time in and out of the criminal justice system is behind her, Jessica remembers the stress of living in this cycle of debt just as well as she remembers how cold it got at night at the Justice Center. She thinks about all the people who head every day to the town’s misdemeanor probation office on North Jackson Street to try to pay their fees and reduce their looming debt just a little. Some of them might have been at the Justice

Center when she was there. Some of them might even have been in that cold pod alongside her, sharing supplies and whatever support they could offer each other.

“It’s a never-ending cycle down there. You got people lined up in the door to probation just giving out cash or [who] don’t have cash.” She stops to consider just how much money must get handed over the counter every day.

“All that money that the probation is making,” she says, shaking her head. “Do you know how many socks you could put on people’s feet with that money?”

Warren County, Tennessee



Warren County is located in the center of Middle Tennessee, about halfway between Chattanooga and Nashville. Of the three counties ACLU-TN visited, Warren County, which is home to about 41,000 people,¹³ had the highest poverty rate, with almost 16% of the population living in poverty in 2019.¹⁴ In the United States, adults in poverty are three times more likely to be arrested¹⁵ than those who have higher incomes, and they are less likely to make bail than someone living above the poverty line.

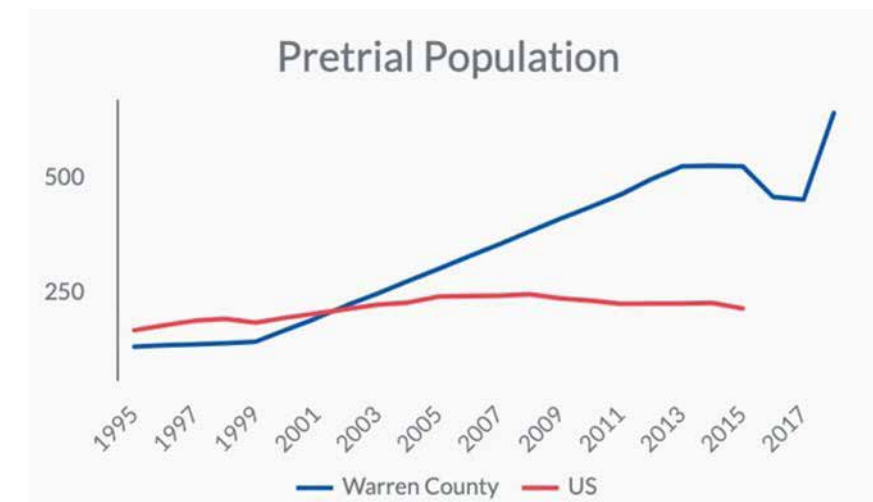
The trend of skyrocketing rates of pretrial incarceration that we found in McMinn County also held true in Warren County. The rate of pretrial incarceration in Warren County¹⁶ has increased from 162 per 100,000 residents in 2000 to 638 per 100,000 residents in 2018. And, like other rural counties in Tennessee, the demographics of the incarcerated population reflect the racial inequities of the criminal justice system. Black people in Warren County only account for 3.8% of the population,¹⁷ but in 2018, the most recent year that these data points were publicly available, accounted for 6.6% of the jail population.¹⁸

During the COVID-19 crisis, overincarceration in Warren County continued. In January of 2020, Warren County jail was at 105.2% capacity,¹⁹ with 42.0% of those detainees being held pretrial, 31.4% of whom were being held pretrial for misdemeanor charges.²⁰ In June 2021, the percentage of the jail population that was there pretrial had grown to 56 percent.²¹

During our visits with people who worked on behalf of indigent clients in the rural court systems of Tennessee, many, including in Warren County, discussed clients who had survived hardships or trauma in their lives, and some mentioned their clients' history with Adverse

Childhood Experiences (ACEs).²² Essentially, ACEs indicate a difficult, tumultuous or emotionally volatile childhood, and can include, but are not limited²³ to, abuse, neglect, caregiver mental illness, and incarceration of a parent.

A person's ACE "score" is derived by totaling the number of different types of adverse events



Source: The Vera Institute of Justice

an individual experiences in childhood. In Warren County, between 27.54% and 32.51% of residents have an ACE score of two or more.²⁴ Advocates continue to work to understand how our childhood environments and experiences impact our outcomes as adults, particularly their impact on incarceration rates. According to one study, when community members have an ACE score of 4 or more, they are 20 times more likely²⁵ to be incarcerated at some time in their lives. This means that

preventive measures addressing factors that lead to higher ACE scores – like readily available mental health care or systems for educators and youth to report child abuse – may be able to help pre-emptively reduce mass incarceration rates, including pretrial detention rates.

Whether they were recalling clients who had a history of adverse childhood experiences or those who worked, without documents, in one of the community's many nurseries and struggled to navigate the criminal justice system, or remembering how medical debt had left their family unprepared for a brush with the bail system, the people we spoke to in Warren County reinforced the overwhelming hardships that people in rural communities face when they are not financially able to overcome the money bail system.





“THE OTHER BOYS KNEW THEY WERE GOING HOME. THEY WERE LAUGHING, JOKING. **THEY DIDN'T HAVE A CARE IN THE WORLD. BECAUSE THEY HAD THE MONEY.**”

—Debbie, Warren County

DEBBIE

“I’d like to explain why I sound like this,” Deborah Evans says just moments after taking a seat in front the camera and lights that have turned the living room of her McMinnville, Tennessee ranch home into a makeshift film studio.

She glances at the blinking red light of the video camera and shifts her weight in her seat, a little uncomfortable with the glare but certain about the words she chooses next. They are weighed carefully; it is important she says this before she can begin telling her family’s story.

“I had cancer 21 years ago, throat cancer. They did radiation, but it came back. Once cancer comes back, it spreads rapidly,” she explains, and gestures to a small, subtle scar hovering a few inches above her collarbone. “They had to actually take my vocal cords out. I couldn’t even talk for at least a year; there was no sound at all, no guarantee I would ever talk again.”

Around this time, she continues, her family was hit with a second crisis: her husband was diagnosed with genetic coronary artery disease. She and her husband had both worked their entire lives and had built up their retirement savings, but financial fallout from the twin health emergencies was immediate and severe. Within months, medical expenses had wiped out their savings and depleted their credit. They withdrew funds from their 401(k)s to keep up with the

mounting hospitals bills and to buy groceries to feed their children. They began to discuss what they would do if they lost the family home.

It was at this moment of financial desperation, Debbie remembers, that the community stepped in and saved her family. Meal trains, organized by parents from her daughter’s soccer team, were delivered to her door. Utility and cable bills were quietly taken care of by neighbors she’d known for years and some she’d never met. Bags of dog food were waiting on the steps of the back porch in the morning. And finally, the mortgage on their house, pooled by church groups from across the county, was paid in full for months in a row – a critical lifeline for her family.

She pauses, reflecting on the way the community rallied behind her family in their time of need. “I wanted to say all that,” she states carefully, “so you’d understand the financial situation we were in We were doing good until medical issues pulled the rug out from under us. That was 22 years ago when it started.”

Twenty-two years ago, on the fourth of July. The nineteenth birthday of her oldest son, Sean.

Debbie still remembers coming back home from watching the fireworks with her husband and infant daughter and settling in for the evening while Sean, whom Debbie fondly describes as a hard-headed but big-hearted “firecracker” as a kid, stayed out to celebrate his birthday – something vague about a cookout in the woods with some buddies. She remembers clearly that she was carrying laundry down the hall when the phone rang.

It was Sean, her firecracker. He’d been arrested.

That cookout in the woods had never happened. On their way there, he and a couple of other teenage friends had instead made the decision to swipe four plastic chairs, priced at \$5 each, from the front of a Dollar General and attempt a quick getaway to their party in the woods. They hadn’t made it a mile down the road when the blue lights flashed behind them. Sean told her that the local police had tried unsuccessfully to talk the store manager out of pressing charges against the boys, but now he was spending the last hours of his birthday in an orange jumpsuit and handcuffs at the county jail, slapped with a misdemeanor shoplifting charge and a \$5,000 bail looming over his head. Debbie couldn’t believe what she was hearing.

She remembers weeping at the sight of her son in chains that night, but she also remembers the sound of laughter: the laughter of the other boys arrested alongside Sean and the laughter of their parents, for whom the night was clearly just the beginning of what would one day be a funny story. They could laugh for one simple reason.

“They had the money,” she says.

Unlike herself and her husband, the other parents could make the \$500 bond without hesitating, without checking the balance of their bank account, without wondering if there was someone, anyone, they could call in the middle of the night to ask for a loan.

“Those other three boys didn’t have a worry in the world,” Debbie remembers. “They knew they were going home. They were laughing, joking. Their parents were bailing them out and they were just care-free kids, they didn’t have a care in the world. Because they had the money.”

For a wealthy or well-to-do family, the \$500 fee to release their son was negligible. But for a family that had been ravaged by medical debt, one that was currently relying on the kindness of strangers to feed their family and pay their utility bills, it was devastating. And it was terrifying. Would they be able to bring Sean home? If they couldn’t make bail, what then? Would he really

have to stay in that cell until his hearing? For months?

“We were scared to death that our son was gonna be in jail for months on end,” Debbie explains. His hearing ended up not being held until almost half a year later. The repercussions of that kind of time would have been disastrous for Sean’s future, just as it was beginning to unfold. Sean was enrolled in classes at Motlow Community College and had plans to join the Navy once he had his degree. If he couldn’t leave the jail, he’d have to drop or fail his classes for the semester, which would mean he wouldn’t qualify for the financial aid he depended on to attend school. And he’d surely lose his job delivering ice, right at the height of summer’s busy season. So there would go one line of income for a family that was counting every penny.

What’s more, Debbie had seen the impact that kind of time behind bars had on a person’s psyche and the path where it led. If he’d had to wait until his trial and lost everything he was counting on for his future, Debbie and her husband believed that their son “would probably be in and out of jail for the rest of his life. Because I feel like once somebody sits in there for six months, they lose all hope. And it’s all for money.”

The decision was clear: they had to get Sean out. The only option they could see was to visit a local bail bondsman’s office. But they still had to somehow find the ten percent to pay the bond.

“We had no idea how we would get him out of jail or what it would take. We had no money. I told you earlier, the cancer and the heart disease had wiped us out. The one saving grace? Our mortgage payment was \$500 and we had not yet paid it. For whatever reason, I hadn’t gone to the bank to pay it. So I had almost \$500, thank God.”

With nowhere else to turn, they met with the bail bondsman. Distraught, Debbie waited outside. “I gave my husband the mortgage money,” she remembers, “and I said, ‘you can give him this, because that’s all we have.’”

They paid the bond. They secured the bail. Sean would get to come home and they would just have to figure out some way to pay their mortgage that month. But the experience with the bail system and the bondsman waiting to collect his fee unnerved Debbie.

“It’s almost like they’re sharks who smell the blood in the water,” she says, although she’s quick to mention that the bail bondsman they went to was a very nice man. But still, she remembers, he and others like him clearly could “smell the need that people don’t have \$5,000 sitting around, [so they say], ‘I’ll loan it to them for a fee of \$500,’ which is a lot of money, even now!”

Debbie shrugs as she remembers her fear and anxiety as she waited outside the bail bondsman’s office. “I see the bail bondsman as a necessary evil, I guess. It’s the only way you can get your kid or your loved one out of jail.”

Debbie is grateful now that everything worked out, now that Sean is grown and his firecracker ways have mellowed with time. Because his access to financial aid wasn’t disrupted by his arrest, Sean, unlike so many others, was able to continue attending classes. He eventually found a long career in the Navy, got married and had four children, whom Debbie and her husband clearly adore. “He’s finally on the right path,” Debbie says with a smile. But it’s not lost on her how close he came to “game over,” as she describes it, on that fateful Fourth of July.

It’s almost like they’re sharks who smell the blood in the water... I see the bail bondsman as a necessary evil, I guess. It’s the only way you can get your kid or your loved one out of jail.

Decades later, when Debbie decided to run for a seat on the Warren County Commission, she did so with the memory of the love with which her community enveloped her family during the medical crisis that left them so vulnerable.

“The love I felt was incredible ... I thought, ‘if I can serve the county that way, I can give back a little.’ Even though I don’t have a strong voice, I want to use what I do have to empower and advocate for people who don’t have the platform that I have. Being a commissioner, I have a little bit more of a platform to speak for them.”

And one community she does believe she must speak up for are her neighbors who are trapped in Warren County’s criminal justice system. While she has felt firsthand the love and support her neighbors gave her family, she sees a lack of that same compassion and understanding when it comes to the justice system.



“I think there’s a mindset that ‘they got what they deserved’ and until it happens to their child or their loved one, they don’t realize that that could easily be them. People need to be educated about what’s really behind a lot of this. It’s a money-making process for bail bondsmen.”

And as long as that process keeps making money for the bail bondsmen and other private profiteers of the criminal justice system, Debbie believes, members of her community who can least afford the financial hardship will continue to pay the price. They are the ones who will continue to be “thrown in jail for things — they’re not even thrown in jail so much for what they did, they could be bonded out if they had the money. It’s almost like we’re sending people to jail because they don’t have money.”

She pauses again, as careful and considerate of the words she chooses to describe the bail process as she was to describe her own journey with cancer and the temporary loss of her vocal cords so many years ago.

“Not ‘almost’,” she clarifies resolutely, her voice now clear and strong. “We are sending people to jail, and we’re keeping people in jail, because they don’t have money.”



JOHN

If it weren't for the tri-starred sign declaring "John F. Partin, Public Defender," in front of the tidy bungalow with white wood siding on the corner of College Street in McMinnville, Tennessee, one might expect to see a pie cooling on one of its green-shuttered window sills or a family dog resting lazily in the shade of the tree in the front yard.

Inside, the house is just as well-kept and welcoming, sunlight streaming in through the large, spotless windows and across the mantle of the stately brick fireplace in Mr. Parton's bright office, the walls of which are decorated with diplomas and framed news articles of the attorney's career highlights.

Despite the office's cheerfulness, the McMinnville native admits that back in 2014, when he was knocking on doors and talking to neighbors about his candidacy for public defender of Warren and Van Buren counties, the conversation usually kicked off with wry jokes implying that public defenders, by definition, didn't try very hard to do their jobs. But he didn't see it that way. "I felt like this was an incredibly important position," he shares. "I'm very passionate about criminal defense, I'm very passionate about representing people who may otherwise be voiceless. I enjoy representing the underdog."

That is certainly how he views his clients, all of whom are facing jail time and none of whom can afford to hire counsel. "And that's a fairly low bar in today's society, being unable to hire an attorney to represent your interests," he says. "When you're facing a prosecution brought by the state of Tennessee with almost unimaginable resources – just the entire weaponry of the state at its disposal – well, they're underdogs almost by definition from the moment we meet them."

Usually, however, the moment he and other public defenders in close-knit, rural communities meet their clients doesn't happen in their offices or at the county justice center. Instead, John says, they've already lived alongside them for years.

"They're our neighbors," he says simply when asked who in his community makes up his clientele. "The people that I represent are the people that I see when I go to the grocery store with my family. Or when I go to eat with my family, they're the people that I see. And they have the same problems that you or I or anyone else has."

But even if they go to the same restaurants or shop at the same grocery stores or have all the same problems that their neighbors have, when it comes to navigating the pretrial process and the reasons they walk into the cheerful white house on College Street in the first place, their experiences and their outcomes are dramatically different.

By John's estimation, over half of his clients in general sessions court are in jail and unable to make bond. And by his estimation, those clients are extremely frustrated by their situation when

he first meets with them.

"What I hear more than anything else," says John, "is 'I'm not convicted of anything! Why am I sitting here when I've not been convicted of anything? What can I do about this?'"

He shrugs, not with indifference but with a veteran understanding of how his clients' financial realities determine their ability to negotiate the system.

"And unfortunately, usually the answer is 'not a lot.' We can try to get their bond reduced to some number that perhaps the family or some other source can come up with to get them released from pretrial detention ... or not," he pauses, perhaps thinking about how often – or how rarely – that is a viable option for his clients or their families.

.....
"If we're not gonna be able to get them out with a bond, their next question is 'what do I have to do to get out of here? How do I get this over with?' And right or wrong, that's how a lot of cases are resolved. [They] plead guilty and move out of jail."
.....

"If we're not gonna be able to get them out [with a bond]," he continues, "their next question is 'what do I have to do to get out of here? How do I get this over with?' And a lot of times that's how cases are resolved. Right or wrong, that's how a lot of cases are resolved."

When asked to clarify what that resolution looks like for his clients, John is to-the-point. "Plead guilty and move out of jail," he says flatly.

The pressure to take out an expensive bond or accept a plea deal in order to get out of jail as soon as possible might be the reality for many or even all of his clients, but when asked if there are

any particular groups in the region he sees as being particularly vulnerable in the system, he is again straightforward.

Warren County, he explains, is home to a large Latino immigrant community, which makes up almost ten percent of its total population. The reason, he says, is because of the role this community plays as the primary workforce for the county's agriculture system. "We have a lot of nurseries," he explains. "I don't know if you've noticed that or not. I don't mean baby nurseries – plant nurseries, tree farms."

Many of the people who make up the nursery workforce in the area are Latino immigrants, and some, he says, are undocumented. This group, he says slowly, carefully, and with considerable understatement, "may be ... overrepresented in our criminal justice system, I would say."

When asked what kinds of charges he sees brought against members of the immigrant community here, he is again to-the-point. "Driving on suspended," he says plainly. In the state of Tennessee, this is a serious charge, considered either a Class B misdemeanor, punishable by six months in jail, or a Class A misdemeanor, punishable by 11 months 29 days in jail – just short of

The Risk of Risk Assessments

As some communities turn to risk assessment tools as an alternative to money bail, John describes himself as “leery” of such mechanisms that measure a person’s risk to reoffend because of family and work history or ties to the community. “I just don’t know that that would benefit a lot of the folks I represent,” many of whom do not have what John refers to as “stable lives.” “If those were the basis for the analysis,” he says, “they might be more likely to come up with \$1,000 to get out of jail than pass a threat assessment,” he says.

ACLU-TN opposes the use of risk assessment tools to inform decisions about who loses their liberty after an arrest. Risk assessment tools are not individualized assessments, but are based on algorithms. The underlying racial bias presented in the criminal justice data points used in these algorithms can bias judicial decisions about pretrial detention.

See Policy Recommendations on p. 34 for more.



one full year behind bars.

“Obviously,” he continues, “someone who’s not a citizen of the United States cannot obtain a valid driver’s license ... If you are arrested for some other traffic offense, even if you’re not able to get a driver’s license, your license is ‘suspended,’ so that they can put you in the system ... and then you’re in the system, and it’s very difficult to get out of the system at that point.”

And so, a large part of the community, the one on whom the major industry of the region depends, becomes fuel to drive the engine of its criminal justice system instead. “It’s kind of shooting fish in a barrel,” he says, shaking his head.

He does, however, also see signs of improvement in his community’s approach to its criminal justice system, particularly after the county jail became so overcrowded that it was put at risk of being decertified by the state.

“Once that specter was raised,” John says with a wry smile, “everyone kind of got into gear about it.”

In 2018, the county formed a joint task force – of which John is a member – to try to find alternative sentencing methods to decrease the jail population. “Which is a good thing, obviously,” he allows. “Those efforts have been fairly successful. Probably not as successful as some would like, but we’re doing a lot better.”

In John’s view, the most successful local reform in recent years is the implementation of an adult recovery court, which tries to steer people struggling with addiction issues away from the criminal justice system by providing treatment and recovery resources as an alternative to jail time. Like many rural communities in the South, John observes a prevalence of methamphetamine and opioid usage in his community. A board member of the recovery court, John commends the structure and support it offers people who might not need to change their entire lives but who “simply lack the resources and the wherewithal to avail themselves of the type of treatment options that the recovery court provides.” What’s more, John believes that if the program were to be scaled up, it could be significantly more successful than current

traditional probation supervision.

But as the task force and local elected officials try alternatives to reduce the jail population and as lawmakers at the state legislature weigh more substantial criminal justice reform measures and alternatives to bail, John is cautious about the actual impact some reforms might have on his clients.

For example, he describes himself as “leery” of threat assessment programs or risk assessment tests for pretrial release. “My clients often don’t have stable lives,” he says. “Right or wrong, they just don’t.”

What does he think about a mechanism that measures a person as being at low or high risk of reoffending because of their family history, ties to the community, or work history? “I just don’t know that that would benefit a lot of the folks I represent,” he explains. “If those were the basis for the analysis, they might be more likely to come up with \$1,000 bucks to get out of jail than pass a threat assessment.”

However, such reforms are still on the horizon and for now, John must keep working to navigate the system as it is today on behalf of his clients. When asked what he would want people to know about the criminal justice system in Warren County, he becomes reflective.

“I think there is sometimes a thought that rural means bad and urban means good when it comes to the criminal justice system, and I don’t think that’s the case at all,” he says.

John recalls the way his neighbors, as they stood with him on their front steps and porches in 2014 and talked with him about his campaign, seemed to come to understand and perhaps agree with John that the role of public defender was not a thankless or underperforming job, but an important one, one that could work to make the community stronger.

“When I was out campaigning for office,” he remembers, “when you speak to people on a one-on-one level, and you kind of get the groupthink out of it, there’s a really inherent sense of fairness. And people recognize that the system needs to be fair. The American criminal justice system is adversarial in nature, and it only works well when both sides are adequately represented.”

“We are a community that prides itself on fairness.” He stops for a moment, clarifying that he really doesn’t mean to sound condescending or trite when he says that. “I really think that’s true, and that’s why a lot of these programs that we’re implementing here have gotten so much traction, because there’s sort of a widespread belief that that’s how things ought to work. I think that’s largely due to the commitment of this community to treating people fairly.”

But that commitment to fairness, which might explain the support of the criminal justice task force or the success of the recovery court, still isn’t reflected in how the pretrial system impacts the community members who end up visiting the well-kept white house on College Street to meet with their court-appointed lawyer.

“I have spent my entire legal career practicing [in rural communities],” John says with pride, “and I think that we do a very good job of trying to address the issues that confront our citizens.”

He pauses for a moment, perhaps considering the issues that face his community, specifically the members of the community that he recognizes from his grocery store and from his family going out to eat, the ones who end up being his clients.

“I do think that money bail could be addressed,” he says emphatically, shaking his head. “There’s just got to be a better way.”



Obion County, Tennessee

The final community ACLU-TN visited was Obion County, located in West Tennessee, about two hours north of Memphis and only a half hour south of the Kentucky border. Home to about 30,000 residents,²⁶ Obion is the 46th most rural²⁷ out of 95 Tennessee counties, and the most rural of the three profiled for our report.

The community has seen financial hardship the past few years, with a number of plants that had provided locals with high-paying jobs, including Tyson Foods and the Goodyear Rubber and Tire Plant, closing down or relocating out-of-state. As a result, the community experienced a poverty rate of 14.6%²⁸ in 2019, and a number of the folks we observed being arraigned during our visit reported working jobs with considerably low wages.

The rate of pretrial incarceration²⁹ has increased from 88 per 100,000 residents in 2000 to 540 per 100,000 residents in 2018. Like other rural counties in our state, Obion County's incarceration rates also reflect a racial disparity: in Obion County, Black people make up just 10.8% of the population,³⁰ but 39.6% of the jail population³¹ in 2018, the most recent year that these data points were publicly available.

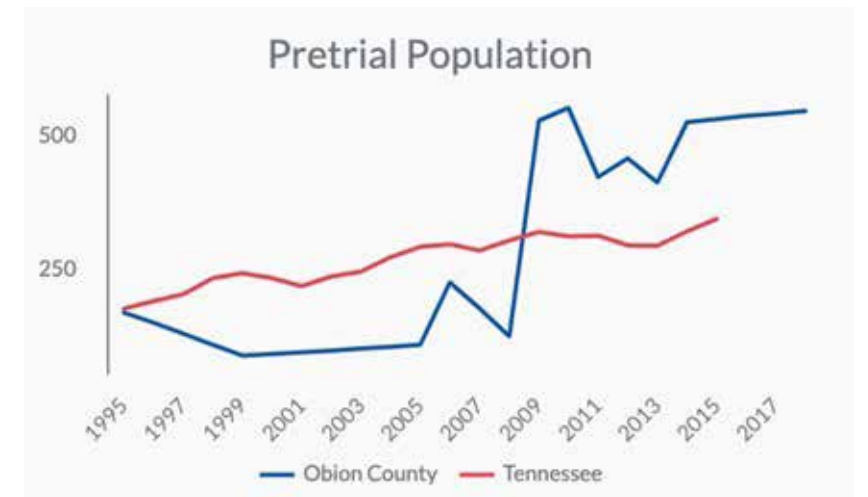
In June of 2021, Obion County Jail was at 93.7% capacity³² and 45.4% of those detainees were being held pretrial.³³ Of those being held in the jail, 12.8% were being held pretrial for misdemeanor charges.³⁴ According to people working within the criminal justice system, addiction is a major factor contributing to arrests in Obion County, and all of the people we observed being arraigned during our visit had been arrested because of addiction-related issues, or they reported struggling with addiction and substance abuse.

In Obion County, we spoke with four people who work within the criminal justice system, including court-appointed drug resource counselors and court advocates, an assistant public

defender, and a local general sessions court judge. In conversation with these community members, we discussed how the local justice system was pursuing alternatives to bail, as well as possible future alternatives to money bail.

While our interviews with the community in Obion County focused primarily on its drug court program, we also learned that the county has started a system wherein they text or call defendants with reminders about their upcoming court dates. According to the stakeholders within this criminal legal system, this program has had a positive effect, reducing failure-to-appear rates.

In other areas of the country, these kinds of programs have dropped failure-to-appear rates as much as 43%,³⁵ giving hope for common-sense alternatives to the for-profit bail system in rural communities in Tennessee.



Source: The Vera Institute of Justice



“MY PEOPLE” – BILL, SELINA, BRANNON

“I mean, frankly,” says Obion County Assistant Public Defender Bill Randolph as he sits under the bright fluorescent lights of the conference room of the Obion County Jail, “there’s a difference between poor people and people that have money. The disparity is there – just like any place.”

And he would know. An attorney for thirty-three years, Bill has worked as a public defender for all but a decade of that time. And as a resident of Obion County since 2002, he feels like he’s got a good handle on the larger community, as well the smaller subset that makes up his client base.

“I don’t know how they live, frankly,” Bill says of his clients.

“A lot of what I call ‘my people,’” he continues, “do not have a checking account. They don’t have a savings account,” he explains. “I mean I don’t know how they get by... A lot of them don’t work and a lot of them never have worked. A lot of them dropped out of school when they were in eighth, ninth, tenth grade.”

But even if they are some of the ones who have one of the low-paying factory jobs in town, Bill explains, his clients typically “don’t have any position or standing in the community. Some of them, I hate to say it, wouldn’t ever have been arrested if they had been someone who was a long-term, longstanding member of the community with a certain profession.”

He leans forward, dropping his voice to a conspiratorial whisper. “You know, men that wear ties don’t usually get pulled over. That sort of thing ... If you’re driving a beater, you know, your chances of getting pulled over are higher than if you’re driving a brand-new F-150. It’s just how it is.”

Most of his people, he says, the ones who drive the “beaters,” the ones who don’t wear ties, initially get pulled over for innocuous infractions: no seatbelt, license plate not visible. That sort of thing.

But when it comes to why his clients end up getting arrested after that initial stop, Bill estimates that ninety percent of the work he does has to do with low-level marijuana charges. “There’s a smell of marijuana,” he explains. “And the officer is *always* gonna say there’s a smell of marijuana.” He shrugs slightly.

Bill says that once they’re in the system, his people and their families will do whatever they can to get out of jail — even if it means financial ruin. “They go and they rustle up money,” he says. “And in certain communities, people will put money in a pot for bond. And you know, I’ve seen mothers, I’ve seen grandmothers who will empty out bank accounts – and I’m talking about \$50-, \$60-, \$70-, \$100 thousand dollars – in bail money and in lawyer money. They’ll go empty 401(k)s, and the next thing I know, mother and grandmother are destitute and penniless.”

Despite this bleak picture, Bill says that he has seen a shift in Obion County’s bail practices since he started his practice as assistant public defender. He has noticed less of a reliance on the bail system, which he allows, with reservation, could possibly be an indirect response to the overcrowding of the local jail system in recent years. Certain charges – like anything having to do with guns, he says – get “prioritized,” over the more common, low-level offenses his people are frequently charged with.

“People aren’t making a lot of bonds here anymore. They’re just not!” he exclaims with a shrug. “I see them come across my desk all the time that are O.R.s, release to mama.” Many of his clients are released on their own recognizance, which, Bill explains, means that “they sign a piece of paper promising to be there” on their day in court.

And then?



Selina Williams

“They show up,” he says, with an unconcerned wave of his hand. Simple as that. At this point, he’s not exactly sure what a third-party bondsman’s function even is anymore.

“The purpose of a bond is what?” he asks, and then immediately answers his own question. “The purpose of a bond is to get ‘em to court. Is a bail bondsman gonna get them to court? No. [Are the] police gonna get them to court? Only if they don’t show. So if they don’t show, the police are gonna get them to court, but that’s it.”

Part of that shift away from bail is what brings two other fixtures of the Obion County criminal justice system to the county jail. Earlier in the day, Bill had spent the morning observing some of his former clients attend recovery court, where they shared with the general sessions judge, their probation officers, family members and each other about their journey with sobriety and what they had accomplished that week, whether it was to sit for the GED, get a promotion at their job, or forgive someone from their past. Each person had started their testimonial by sharing how many days sober they’d earned, and each person received a round of applause when they finished. Bill had politely applauded every time a participant shared with the group.

Later, in the afternoon, peer counselor Brannon Powell and mental health liaison Selina Williams sit quietly in the same space, watching the general sessions court arraignment proceedings of the day – a much more somber gathering than the supportive, hopeful tone of the morning’s recovery court. As the judge speaks with each defendant and talks through their charges, their background and, almost universally, what mental health, addiction or substance abuse issues they are struggling with, he will frequently point out either Selina or Brannon, and explain to the defendant that this person is going to talk to them in just a minute about what comes next.

The arraignment over, the pair springs into action, sitting down with the arraigned community members and talking through their needs and what resources are available to help them. Both



“And you know, I’ve seen mothers, grandmothers who will empty out bank accounts – and I’m talking about \$50-, \$60-, \$70-, \$100 thousand dollars – in bail money and in lawyer money. They’ll empty 401(k)s, and the next thing I know, mother and grandmother are destitute and penniless.”

– Bill Randolph, Obion County Assistant Public Defender

advocates begin to call their networks, find out who’s got room for one more, determine which new clients would be able to arrange for childcare for thirty days — starting now, right this very afternoon – if they were lucky enough to get in for treatment. They go back and forth checking to see who’s got a bed, who’s got a ride, who’s got insurance. In between interviews and assessments, they both somehow find time to sit down and share their experiences with the pretrial system in poor, rural communities in Tennessee.

While she’s relatively new to the Obion County court system, Selina Williams is a veteran in the system, working as a criminal justice liaison for seven years, and spending just under two decades in mental health case management before that. The grant-funded program she works in now, housed through the Carey Counseling Center in Nashville, finds her working to remove barriers to resources for people in the criminal justice system who have co-occurring mental health and alcohol and drug issues, and, when possible, trying to work to divert them from jail.

For most of the people that Selina works with, bail is not a realistic option. “The majority of my people,”

she says, “they don’t have any money, they don’t have a job, they don’t have insurance ... Most of them are the breadwinners, they have children out here. Some of them don’t know where their kids are when they’re in jail. If they can’t get out, then they’re worried about that.”

It’s a similar situation for Brannon, a peer counselor for Tennessee Project Lifeline, which, through a grant under the Tennessee Department of Mental Health and Substance Abuse, works with counties’ general sessions courts to connect people in the justice system to addiction treatment resources as an alternative to incarceration. He spends a good amount of his time – at least once a week, he estimates – in Obion County, working to provide assessment and to support participants of the county recovery court.

“I’ve seen, with bail, they’re not able to get out of jail and they’re stuck,” Brannon says in between meetings with clients who have been arraigned that morning and who need assistance navigating mental health and addiction resources. “No family members, no help to get out of jail ... I spend a lot of time here in Obion County, but they work really – I guess cause it’s a small community and they know everybody... they’re able to get the help that they need. There’s other counties that ... they just seem to get stuck in jail. And the help is not offered as much.”

When that happens, Selina explains, the situation with her people can become dire. They’ll tell her, “I want to get out, I want to get back to my family. I want to get back to my children. I just want to get help ... Why am I still here?”

To Selina, that mounting despair is completely understandable. “They get upset. Some of them become suicidal. They just want to know why. Why them, why this is happening? It’s the main thing they’re worried about; [getting] back to their families.” It’s Selina’s job, she says, to help them get the

treatment that they need so that they can stop the cycle of incarceration that keeps them from their families in the first place.

Court systems like the one in Obion County are trying alternatives to incarceration or using programs like Selina’s and Brannon’s to rely less on practices like money bail. But Brannon still thinks that whether or not “his people” can get out – in his case, out of the Obion County Justice Center and into a substance abuse treatment facility – is still largely dependent on whether or not they have money.

“If somebody’s got resources? Insurance? I can get them in somewhere this afternoon,” he explains, a hint of frustration in his voice. “As opposed to having to get on a waitlist ... But mainly my people – I say my people, people that I deal with – have no resources, no insurance.” He gestures to outside the door, where he had just been talking with a woman who had been arraigned for a methamphetamine possession charge that morning. He’s spent the last hour talking with her and her husband, trying to get everything lined up to get her into a bed in a rehab facility in Nashville.

“This girl that I’ve been on the phone with,” he continues, “she says she’s got TennCare. But we can’t identify that she has TennCare.” He shakes his head slowly. “And that throws it into a *whole other* ballgame.”

And what could happen to her might then be the same thing he sees happen to his people across the state, the ones who don’t have insurance and can’t get a bed; the ones who don’t have money and can’t make bail.

“They sit in jail,” he says, sighing. “They sit in jail and fall through the cracks.”

Back in the Justice Center conference room that morning, Bill, the public defender, is quiet for a long time as he reflects on the economic disparity that he says is as real in Obion County’s criminal justice system as it is anywhere else. “I tell my people to dress up when they come to court,” he finally says.

“Some can, some can’t ... But are you treated better in United States courts if you present a good appearance? Absolutely. That’s just how it is. So there is disparity between poor and rich, or people who have money and people who don’t.”

He pauses again.

“I have been a prosecutor and I’ve been in private practice. I just like this work better. I don’t know why. When you’re a prosecutor, you’re always expected to win. And when you work as a public defender, no one expects you to win,” he says, with a little laugh. “And your client doesn’t even expect you to win ... [They think that] because you’re a public defender, you’re not going to work for ‘em. So I try to disabuse them of that notion.” He pauses again for a moment to think about his people, the harsh lights of the conference room bouncing off his glasses. He nods to himself.

“And really?” he says, “It shouldn’t matter whether you have money for retained counsel or not. It really shouldn’t.”



Brannon Powell



JUDGE SMITH

“For so long in the criminal justice system, what we have done is lock up the people we’re mad at.”

“I’m Jimmy Smith and I’ve lived here all my life. I was born in a little town called Hornbeak. I became a judge in 2009.”

The Honorable Jimmy Smith, wearing a suit and tie, sits in a small wooden chair in the center of his courtroom on the second floor of the Obion County Courthouse, located in the heart of downtown Union City, Tennessee.

He’s already presided over recovery court that morning, he’s got two meetings and a funeral to attend that afternoon with lunch somewhere in between, later he’ll run the last arraignment before the weekend, and he’s got to be in Memphis by six o’clock.

The judge is a busy man, and in this community, an important one.

To his left and right are the tables where plaintiffs and defendants sit with their counsel, hired or appointed. Behind his right shoulder is the witness stand, a box of tissues waiting expectantly beside the microphone. On the far left of the room are two rows of six swivel chairs where a jury of peers serve their civic duty. And directly behind him is the large, imposing, dark-paneled bench where he oversees the proceedings of his court, the seal of Tennessee hanging proudly on the wall behind it. It would undoubtedly be an intimidating scene if you were called for general sessions court, but the judge, for one, seems very at ease as he sits for the camera, a warm, friendly smile turning up the corners of his lips as he begins talking about the community in Obion County.

“Well, it’s a great place to live!” he says with sincere enthusiasm – which, to be fair, is how Judge Smith says most things. “It’s one of those places that – people who live in rural areas tend to think there’s no better way of life ... Most people who live here are glad they live here,” he says confidently.

“Some leave,” he continues, noting that a few of his own children have been lured away by the “bright lights” of Nashville, “but even the ones that leave, I think, always have a longing for where they grew up in a small town and look forward to maybe someday coming back.” It is not immediately clear if this last remark is a local man’s observation of his neighbors or rather the wishful thinking of a father who misses his children.

Regardless, for all its charms and advantages, the judge realizes that living in Obion County has gotten harder for a lot of folks in recent years. For a long time, he explains, even outside of the local farms, there were “a lot of really good opportunities for people who didn’t go to college to earn a good living here,” he says – including the Tyson Foods plant, William Sausage, and especially the Goodyear Tire and Rubber Plant, which was the beating heart of the economy in town.

But when those plants started closing, particularly when Goodyear left Obion County in 2011 and took 1,900 high-paying jobs with it, well, “that was pretty devastating to the local economy,” the judge says. “It was a very, very high income for a rural-area workplace. It displaced a lot of people. A lot of changes had to take place.”

There have been plants that moved into town since the closures, Judge Smith says, and although he allows that “none of them meet the level of income that the Goodyear plant provided, it at least has given us a situation where anybody that wants a job can find a job in this county.”

“I tell people in court every week that don’t have a job that there are more jobs in Obion County than there are people to do them,” he declares with emphasis. “But you need to be clean and sober, and you need to show up to work. The jobs are here.”

A few hours after sitting for his interview, Judge Smith will repeat this adage almost verbatim, and in the same assured, confident tone, to one of the men being arraigned before him at the Obion County Jail. The man, wearing a black-and-white striped prisoner’s uniform and chains shackled around his wrists and ankles, will stand in front of the judge at a podium that has been worn down from use. When asked, he will dutifully answer the judge’s question about how much he makes at his job at one of the local plants. His answer is that he makes a little over \$8 an hour.

So the judge may be right that the jobs are here, but the wages are beyond low.

And he is aware of the economic disparities people who don’t make any money face in the criminal justice system. For people like the ones he will see at the arraignment later that afternoon, he says, “if you’ve got financial resources, I won’t say the amount that the bond is set at doesn’t matter, but, generally ... you can set a high bond and they’ll be out before dark. And other people, who you might even set a much lower bond because they don’t have financial resources, they’re gonna stay in jail a considerable length of time.”

It’s been something of a personal mission, the judge says, to change that in his court.

“When I went on the bench,” Judge Smith recalls, “you had a preset bond and you didn’t look at the individual factors related to the people that were involved. That was something that I wanted to do differently. Fortunately for me, it came at a time when that was happening at other places so I could see what was going on in other courts and how other judges were handling that.”

“We just developed an individual approach to look at factors relating to each individual,” he continues. “Certainly the crime is a big part of that. It’s gonna be very similar for a drug crime whether you’ve got money, or whether you don’t. But, we’re also looking at somebody’s ability to pay, their ties to the community.”

One reason why he thinks individual, case-by-case analysis works better than preset bonds in Obion County is that “even though it’s not quite as commonplace as it used to be, most judges know the people in their community,” he says.

So, he reasons, “in rural areas, if you don’t know the particular individual before you, you know some of his family or some of his associations. You probably know if he went to school at one of the

local schools or if he's worked at one of the local employers. So we have a pretty good feel of folks that we're dealing with."

During the arraignment that afternoon, Judge Smith seems to be able to call on some kind of connection to each handcuffed person standing at the worn-down podium before him – whether it's because he knows the restaurant where they're up for a promotion soon, or about how much their husband makes at a mid-level job at the Green Plains plant, or how far they're going to have to walk to get home if he releases them on their own recognizance that afternoon (which he does, saying that it's a good thing it's not raining that day since the man has a trek ahead of him). He even knows that one woman, charged with drunk and disorderly conduct, has been struggling recently with her hard-won sobriety following the deaths of her brother and mother this past year.

But still, the rates of incarceration, including pretrial incarceration, in Obion County are higher than they were in the early 2000s – a standard trend in rural communities across the state and nation, regardless of whether the local judges handing down the sentences know their defendants personally or not. And while there was a noticeable drop in the pretrial population rates in Obion County in the years after Judge Smith took office, in the past few years the numbers have started to creep back up.

Perhaps that is because, like the judge says, if faced with a drug charge, a person's ability to get out of jail is going to be similar whether or not they have money. And if that day's arraignment and the parade of methamphetamine, marijuana and narcotics possession charges is any indication, the reason the person is standing at the arraignment podium is very likely to be drugs, which means more filled beds at the Obion County Jail.

And while he's an enthusiastic proponent of alternative sentencing programs like recovery courts and grant programs that bring mental health and addiction experts into the courtroom to try to help community members navigate the criminal justice system, the judge also sees the larger issue as it affects the community as being a problem of perspective. Namely, how society has defined and "othered" the people in our communities who are caught up in the incarceration system.

Judge Smith recalls what a mentor once said at a conference years ago that has always stuck with him: In the justice system, you should "lock up the people that you're scared of, not the people you're mad at." For so long in the criminal justice system, what we have done is lock up the people we're mad at," he says.

The people we more often see serving long sentences behind bars in our jails, Judge Smith says, "they stole something. Granted, they shouldn't have stolen it and there are consequences. They used drugs. Granted, they shouldn't have used drugs and there are consequences, and we'll deal with it. But by and large, they are people we're mad at, they're not people who've killed somebody, who have committed terrible, serious crimes that should be locked up."

Judge Smith alludes to another of his mentors with a perhaps more traditional viewpoint of the criminal justice system. "I've got a dad who's 91 years old," he says, smiling. "An incredible person, but he's old school," he explains. "He's of the philosophy that if somebody did the crime, they ought to do the time. You lock 'em up and throw away the key, and they pay their debt to society."

"That sounds good to a lot of people," he says. But that's not how it actually works – especially in a close-knit community like Union City or Troy. "Whether it's a day, week, month, year, or three years in jail," the judge explains, "those people are coming back out of jail and they're going back to being your next-door neighbor, liv[ing] across the street from you, or hav[ing] kids that go to school where your kids go."

"These folks are coming back into the community," he says. "It's not a matter of *if* they're coming back, it's *when* they're coming back. Even people who commit crimes that sometimes we think we'd like to lock 'em up and throw away the key, the reality is under the sentencing guidelines that exist in the state of Tennessee, that a person is gonna serve their sentence and then they're coming back out of jail. They're coming right back into the community they left by and large ... And generally, incarceration makes a better criminal than it does a better citizen."



When it comes to the members of his community who are struggling with addiction and ending up in jail for low-level crimes, he says, "if we don't rehabilitate people and treat people, then they're coming out of incarceration a better criminal than they went into jail as. If they're a better criminal, and that's their livelihood, and they're still dealing with drugs and alcohol, then they're more likely to make the community worse rather than making it better."

Instead, Judge Smith says, "we need to be working on making them better citizens, or at least rehabilitating them so they have the potential to be good citizens. Then, the chances of them coming back to jail are reduced astronomically."

"If we can rehabilitate them, and they're living in the community with you, then you're gonna be, one, a better community," he says, starting to list off the public benefits on his fingers. "Two, a safer community, and three, they may end up being people that become your friends or acquaintances. The person that's living next door to you now is not the same person that went into jail ... Everybody deserves a second chance. It's a question of whether or not they're gonna take advantage of that second chance."

The time he'd allotted for the interview over, within a few minutes Judge Smith has whirled out of the courtroom to his next appointment. In a little over an hour, he'll be behind another bench, this time at the county jail, calling in the first defendant to shuffle in, chains clanging around his ankles, and stand at the little, worn-out podium and face his arraignment.

And Judge Jimmy Smith, from Hornbeak, Tennessee, will begin the day's work of deciding which of his neighbors he thinks is going to take advantage of their second chance.

Policy Recommendations

Ending our reliance on money bail through equitable, common sense initiatives

Many changes are needed to create a fairer, smarter pretrial system and reduce the number of people held behind bars while they await their day in court.

Much public discourse has centered around “ending cash bail,” which is over-relied on and leaves people languishing in jail simply because they cannot afford to pay. ACLU-TN is committed to ultimately ending our state’s reliance on cash bail. However, it could be eliminated tomorrow, and we would still have a pretrial system that is fundamentally unfair and puts too many people behind bars.

As long as the state of Tennessee continues to use cash bail, ACLU-TN recommends implementing the policies below to transform the pretrial system, reduce mass incarceration, eliminate wealth-based detention, and combat bias and systemic racism.

Enforce Tennessee’s existing bail laws.

Tennessee’s existing laws require that release on recognizance (ROR) or unsecured bond should be used whenever possible, and that cash bail should be used as the last resort. If lawmakers worked to ensure that this law was being enforced across all counties in our state, we believe it would dramatically reduce pretrial detention in Tennessee.

Ensure more transparency and accountability around the pretrial system.

County and state court systems should be required

to regularly collect data on pretrial incarceration regarding who is being held, who is being released on recognizance and their rate of return to court, the use of commercial surety bonds and cash bail, and the impact of being unable to get out on people in the system. This information should be regularly reported to the Administrative Office of the Courts and to the public.

Implement alternatives to incarceration, including:

1. Institute mandatory citation/summons (immediate release) practices, instead of arrest and booking, for as many people as possible. We generally suggest triggering mandatory pre-booking release based on charge level.
2. In addition to a range of charges for which diversion is mandatory, jurisdictions should also utilize presumptive citation/summons (instead of booking) for all non-violent misdemeanor charges and some non-violent felony charges. This is an additional category of pre-booking release, at the discretion of arresting officers, beyond the mandatory booking diversion outlined above.
3. Court date reminders via text, email, or phone call should be made to all individuals released, regardless of the mechanism of release (i.e., citation or release on conditions). Research shows that in addition to being a less expensive

UNDER TENNESSEE LAW, MONEY BAIL SHOULD BE USED AS A LAST RESORT.

Tennessee’s bail statutes make it clear that our courts should only use money bail as a last resort. In fact, according to our state laws, the first choice of the court should be to release the defendant on their own recognizance or an unsecured bond (Tenn. Code Ann. § 40-11-15), or, failing that, on the “least onerous conditions,” like restricting their activities or with whom they associate, to ensure their return to court (Tenn. Code Ann. § 40-11-16). Only after the court has considered these other conditions of release should money bail be used (Tenn. Code Ann. § 40-11-17).

If courts across Tennessee were to simply follow our existing statutes as written, our state would see a decrease in pretrial incarceration, and by extension, reduce our state’s overall incarcerated population.

alternative to pretrial detention, courts that use text reminder systems reduce their failure to appear rates by as much as 51 percent. These systems have been implemented in courts across the country, including Virginia, Florida, Maryland, California, Pennsylvania, and Washington.³⁶

Facilitate speedy individualized release hearings — distinct from “detention hearings” — with necessary due process protections.

1. Those who are not provided a citation/summons (released without booking) shall be provided individualized release hearings within no more than 24 hours, with counsel, and with a strong presumption of release.
2. At these hearings, people who have been arrested shall have the right to limited discovery and to present and cross-examine any witnesses.
3. The bases or “risks” upon which the court can impose individualized conditions shall be limited to imminent and willful flight or imminent serious physical harm to a reasonably identifiable person, including persons whose exact identities are unknown.
 - i. Any liberty-restricting conditions set must be determined, by clear and convincing evidence, to be the least restrictive necessary to mitigate a specific identified threat.
 - i. Where the court sets other (i.e. not “liberty-restricting”) conditions (e.g. telephonic check-ins), they must still be

the least restrictive necessary.

- i. Jurisdictions should offer pretrial supports, such as reminder calls/texts ahead of a court date and transportation assistance.
4. No individuals shall be required to pay for any monitoring technology or supervision if they are released pretrial. Jurisdictions shall not impose a fee to facilitate a person’s release.
5. The imposition of any pretrial condition must be narrowly tailored to the individual (no blanket conditions).
6. Courts shall not impose conditions that are substantially likely to interfere with a person’s ability to fulfill the role of primary caregiver or primary household supporter.

Eliminate wealth-based discrimination.

Wealth-based discrimination in the pretrial context refers to a court’s approach to pretrial release and the setting of monetary bail in a manner that deprives people of their liberty simply because they are too poor to pay. This discrimination often results from the use of bail schedules and the absence of meaningful presumptions of indigence or standards for inquiries into a person’s ability to pay.

1. Any bail amount set (whether secured or unsecured) must be in an amount that the person is able to afford based on their affidavit and/or testimony, subject to any rebuttal evidence the government may have, at the release hearing. In determining what a person is “able to afford,” courts should proceed in two steps:

Different Types of Bonds

Secured bond - requires a defendant to pay a certain amount of money to secure their release from jail before their day in court.

Unsecured bond - requires a defendant to promise to pay a certain amount of money if they fail to follow the conditions of their bail or return to court.

Surety bond - requires a defendant to engage a bond company, to whom they give a percentage of a set bail amount. The defendant does not get back this money.

Cash bond - requires a defendant to put up the entire amount of bail to secure their release, but they get it back when they show up for their day in court.

Property bond - a bail bond company puts a lien on a defendant’s house or property, which they lose if they don’t show up to court.

- i. First, the judge shall exclude from consideration any income derived from public benefits (i.e. SSI, SSDI, TANF) and any income up to the federal poverty level. If the person has no income outside of public benefits or a household income below the federal poverty level, that person shall be assumed unable to pay any bail amount.
 - ii. If the person has household income above the federal poverty level that is not derived from public benefits, the judge shall consider what the individual could reasonably pay within 24 hours of arrest, subject to the exclusions in (i).
2. Rebuttal evidence regarding ability to pay should be limited to substantiated income or inflows of cash or liquid assets from other sources. The government must be able to establish that this income or other money is not allocated to household necessities, considering an individual's circumstances.
 3. Jurisdictions must eliminate all fees on monetary bonds, whether secured or unsecured.

Risk assessment tools should play no role in the pretrial system.

While some existing tools are worse than others and there is a broad range of algorithmic tools (also known as “risk assessment tools”) currently used by criminal justice agencies, the ACLU has significant concerns about actuarial algorithms’ potentially detrimental racial impact, lack of transparency, and limited predictive value. Moreover, algorithmic tools do not provide the specific, individualized information required to justify limiting a person’s pretrial liberty.³⁷

Even with improvements, risk assessment tools are unlikely to be able to safely and accurately predict willful flight or commission of violence. Thus, these tools should not be used to inform decision-making that could result in an infringement of a person’s fundamental rights, such as those involving detention or imposing other liberty-restricting conditions. While they have no

place in our pretrial vision, if risk assessment tools are used, they should not consider demographics (including race, gender, education, socioeconomic status, or neighborhood) to identify predicting factors or determine defendants’ risk scores, the types of data that are used should be made public, and annual validation reporting should occur.

Individuals who are released should not be responsible for paying the costs of supervision.

Virtually all people who are arrested should be released pretrial, though sometimes such a release will be subject to conditions, including supervision. Pretrial supervision may sometimes involve periodic check-ins or electronic monitoring, for example, which may carry attendant costs. The cases where pretrial supervision is deemed necessary should be rare. Regardless of the type of supervision required, any associated costs should not be passed on to people released pretrial. Companies should not be able to profit off people being released pretrial.

Eliminate the profit motive in facilitating pretrial release.

Currently, private actors make money off of people navigating the pretrial period through the imposition of secured monetary bonds, allowance of commercial surety companies that contract with individuals to post their bond, the levying of fees associated with a person’s pretrial supervision, or the imposition of administrative fees and surcharges associated with release.

The for-profit bail and pretrial supervision industries are designed to take advantage of vulnerable families by charging high, non-refundable premiums for services and often requiring people who have been arrested and their loved ones to enter into abusive contracts. These contracts are typically entered by people as their only way out of jail, and they are often subjected to additional fees, arrest, monitoring, and even violence under contract terms. As long as cash bail is a practice that the state is not willing to end, the entity posting bond should be state or local governments rather than private actors, whose objective will always be to protect their bottom line.

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**“In Our Backyards”:
Ending Mass
Incarceration Where
It Begins**

This project was made possible through a grant provided by the Vera Institute of Justice as part of their “In Our Backyards” initiative.

The Vera Institute of Justice’s “In Our Backyards” initiative is driven by the realization that national gains made toward reversing mass incarceration are being totally eroded by deepening problems in small cities and rural communities across the country.

A fundamental barrier to change is the lack of information about how local justice systems contribute to mass incarceration.

The “In Our Backyards” Project makes data and knowledge about the carceral landscape in each American community widely available, including jail and prison usage, racial and gender disparities, and locally specific drivers and consequences of incarceration.

Explore incarceration data on Tennessee and other states at: <https://bit.ly/Vera-IOB>.

Video versions of these stories are available on our website at: <https://bit.ly/IOBBail>.

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