

What Happens When Prosecutors Stop Asking for Cash Bail?

Author : Jessica Smith

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Philadelphia's recently elected district attorney implemented a No-Cash-Bail reform policy, providing that the district attorney's office would stop asking for cash bail for defendants charged with 25 misdemeanor and felony offenses. A study of that policy change found, among other things, that it led to an increase in defendants released with no monetary or other conditions, a decrease in the number of defendants who spent at least one night in jail, but no accompanying change in failures to appear (FTAs) or recidivism. Aurelie Ouss & Megan Stevenson, [Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail](#) (George Mason Legal Studies Research Paper No. LS 19-08, Feb. 17, 2019). Those skeptical of eliminating cash bail have argued that taking a monetary incentive out of the system would result in higher FTAs and increases in pretrial crime. *Id.* at 5. The new study undermines those assertions.

On February 21, 2018, Philadelphia's District Attorney Larry Krasner announced that his office would no longer seek cash bail for defendants charged with 25 different offenses. *Id.* at 2; 7. The offenses include felonies and misdemeanors, ranging from low-level offenses like non-residential trespass, to more serious ones, like burglaries with no person present and certain drug crimes. *Id.* at 7. The goal of the reform was to reduce pretrial detentions and avoid wealth-based detentions. *Id.* To evaluate the impact of this policy, the researchers pulled data from court records, including 47,052 observations. *Id.* Of the cases filed before the new policy went into effect, 63% would have qualified for no cash bail under the new rules. *Id.* at 8. Of those cases, 47% already were getting released on their own recognizance (ROR) before the reform. *Id.* at 9. Only about one-quarter of cases that would have qualified for no cash bail under the new policy led to at least one night in jail, and 16% spent at least a week in jail. *Id.* For the earlier filed cases that would have been ineligible under the new policy, the ROR rate was 10%, 58% of defendants spent at least one night in jail, and 44% spent at least a week in jail. *Id.* Thus, the researchers note, the new policy was aimed at cases for which money bail and detention rates already were relatively low. *Id.*

The researchers began by exploring whether the policy changed the use of cash bail for eligible offenses. *Id.* at 10. They found that it resulted in an immediate 23% increase in the likelihood that an eligible defendant gets ROR. *Id.* at 11. However, they noted that this increase in ROR is at least partially the result of a substitution from unsecured bail or release with nonmonetary conditions. *Id.* Release without the payment of monetary collateral—meaning release on either ROR, unsecured or non-monetary bail—only increased by 14%. *Id.* Most of the decrease in monetary bail came from a 41% decline in bail amounts of \$5,000 or less. *Id.* Because defendants in Philadelphia have to post 10% of their bail to be released, the reform mostly changed monetary conditions for defendants who needed to post \$500 or less to obtain release. *Id.*

With respect to detention rates, the only significant difference found was in the fraction of people spending at least one night in jail, where the researchers found a drop of about five percentage points, or about a 25% decrease, but no detectable difference in longer jail stays. *Id.* The researchers note, however, that while the policy did not result in a large decrease in the pretrial detention rate, avoiding even a single night in jail could have important implications for defendants and eliminating the obligation of procuring a \$500 deposit yields benefits that could be particularly important for low income defendants. *Id.*

These results are really interesting, and show the impact that the prosecutor's office can have on bail outcomes, even

when the prosecutor is not the person making the bail decision (in Philadelphia, as in North Carolina, the initial bail decision is made by a magistrate. *Id.* at 6.). But it's the next part of the study that really caught my eye.

Because the policy change resulted in a substantial increase in the number of people expected to show up in court with no formal accountability mechanisms, the researchers could examine whether tools such as monetary bail and pretrial release conditions help with pretrial compliance. *Id.* at 11. To do so, they looked at three main outcomes during the first four months after the initial bail hearing: FTA, recidivism, and serious recidivism. *Id.* In spite of the reduced financial accountability that came with the policy change, researchers found "no detectable evidence that the decreased use of monetary bail, unsecured bond, and release on conditions had adverse effects on appearance rates or recidivism." *Id.* at 13. This is a really big result, causing the researchers to conclude that a move away from cash bail can be accomplished without an increase in FTAs and pretrial crime. *Id.* at 3.

I'm not suggesting that this study is conclusive evidence that reliance on money bail can be reduced with no impact on FTAs and pretrial crime. However, because it's one of the first studies focused on evaluating how reducing monetary bail impacts those critical outcomes, it's an important one.