



MEMORANDUM

Date: January 10, 2022

To: Melissa Manriquez, Clerk of the Board
Pima County Board of Supervisors

From: Sharon Bronson *Sharon Bronson*
District 3, Chair
Pima County Board of Supervisors

Re: Addendum Item for January 18, 2022 Meeting

Please place the following item on the Addendum for the Board of Supervisors meeting on January 18, 2022.

NEW BUSINESS

Presentation/Discussion/Action: Proposed Modifications to Arizona's Cash Bail System.

Presentation by Amelia Cramer, Chair, Criminal Justice Committee, NAACP Tucson Branch Executive committee. Discussion of proposal to eliminate money bail as a condition of pre-trial release from jail for non-violent crimes. Action regarding possible support of legislation in the 2022 Arizona Legislative Session. Attachment 1 – Cash Bail Reform. Attachment 2 – Eliminate money bail in Arizona. Attachment 3 – Bail Reform – NAACP One Page Summary. Attachment 4. Report on Recommendation's on Cash Bail Reform. (District 3)

Thank you.

Cash Bail Reform

There are some 450,000 people in jail today and every day simply because they cannot afford the price of their freedom. They cannot make bail. There is growing consensus among law enforcement, prosecutors, defense attorneys, judges, and community advocates that access to wealth should not determine who is detained and who is released pending trial. The current cash bail system does a poor job of both ensuring appearance at future court hearings and protecting public safety.

Recognizing that “the constitutional standard of never jailing someone merely for poverty must be adhered to [and that] courts must require a high burden of proof before determining an individual cannot be released,” the US Commission on Civil Rights held a hearing in March of this year on the civil rights implications of the cash bail system, which included testimony from a wide variety of experts and stakeholders.

Several states and local jurisdictions have instituted deep reforms to cash bail in recent years. Led by the Tucson chapter of the NAACP and Pima County Attorney Laura Conover, Arizona is set to follow suit.

Amelia Cramer, who is helping to lead the NAACP’s campaign, is a former Chief Deputy Pima County Attorney who has seen firsthand how the cash bail system often actually subverts justice rather than serving it. She cites the cases of two individuals who appeared in Pima County courts in the same week as illustrative of the profound flaws in the current system.

The first was a man arrested for the attempted murder of police officers when he opened fire with a semi-automatic weapon as officers were approaching his door to serve a warrant. The judge, in that case, set a very high bail amount, assuming the defendant would not be able to post bail and would remain in custody. But the shooter was able to mortgage his home and get out on bail in relatively short order.

The second was a homeless woman with mental illness who had been arrested on a warrant stemming from an incident two years earlier in which she was accused of stealing a candy bar. A judge set her bail at \$250, which she could not pay. She remained in jail for 45 days awaiting a court appearance, at which she pleaded guilty and was released on the condition that she make contact with a mental health service provider present in the courtroom before leaving.

“My feeling after that week,” says Cramer, “was that things were exactly backwards in terms of money bail. There is much evidence that the current system often allows the release of those who should be detained for public safety, and the detention of those who are simply poor and represent no threat to public safety, and that the burdens of cash bail fall disproportionately on people of color.”

Detaining those accused of a low-level, nonviolent crime is also very costly, using resources that could be spent on the services people need to address the issues that lead to crime. An NAACP Tucson report states that “even short pretrial stays of 72 hours in jail have been shown in national and a local Arizona study to increase the likelihood of recidivism” and, “pretrial

incarceration can cause real harm, such as loss of employment, economic hardship, interruption of education or training, and impairment of health or injury because of neglected medical issues.”

In 2016, the Arizona Supreme Court Task Force on Fair Justice for All recommended eliminating cash bail in this state, stating that “communities are better served by assessing the risk defendants pose and their likelihood of appearing for their future court hearings.” (Arizona Supreme Court Task Force on Justice For All, p. 33, 2016.)

The NAACP campaign seeks to eliminate the use of cash bail in Arizona and instead institute a presumption of pretrial release for those charged with misdemeanors and non-violent felonies and provide for detention without bail for those who pose a risk to public safety.

Our LWVAZ position on criminal justice also supports this proposal. Specifically, our position supports “the elimination of systemic bias” and seeks to “ensure that no person suffers discrimination before the law due to their economic status.”

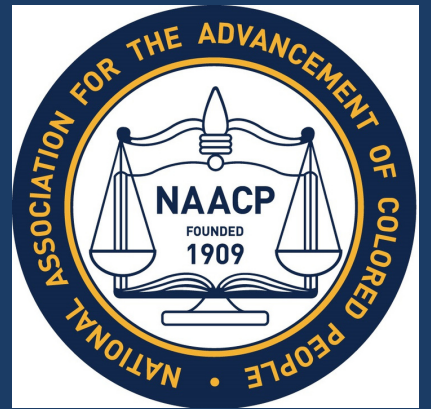
The campaign enjoys the support of the Arizona Justice Alliance and the AFSC Criminal Justice Coalition - LWVAZ is a member of both - and will be an important focus for us this legislative session. In his opening remarks to the US Civil Rights Commission hearing on the civil rights implications of cash bail, Commissioner David Kladney said, “through our research efforts thus far, I have not understood bail to be a partisan topic, and instead have seen actors from both parties, as well as prosecutors, defense attorneys, judges, and community advocates all coming to the table with ideas on how to uphold constitutional rights and protect the public safety.”

The campaign to eliminate cash bail in Arizona hopes to garner bipartisan support for this important effort in the coming legislative session.

For more information, contact: lwwazadvocacycj@gmail.com.

Submitted by Nancy Hand, State Criminal Justice Issue Team Lead

ELIMINATE MONEY BAIL IN ARIZONA



Current Bail System is Broken

NAACP supports eliminating cash bail.

Cash bail or money bail is the money paid as a condition of pre-trial release to get out of jail after arrest but before conviction. It was intended to ensure the person facing charges would return for trial or hearing.

THE BAIL SYSTEM CRIMINALIZES AND PERPETUATES A CYCLE OF POVERTY

Inability to pay cash bail causes harm to those incarcerated and their families.



Cash bail negatively impacts employment, health, increases recidivism, disrupts and displaces families, and causes significant damage to the wellbeing of the community.



THE WEALTHY CAN BUY FREEDOM

Those with financial means can buy their release from jail - even if their behavior poses a serious public safety risk to the community. For instance, a shooter in Tucson was out on money bail for two felonies when he killed a DEA Agent.

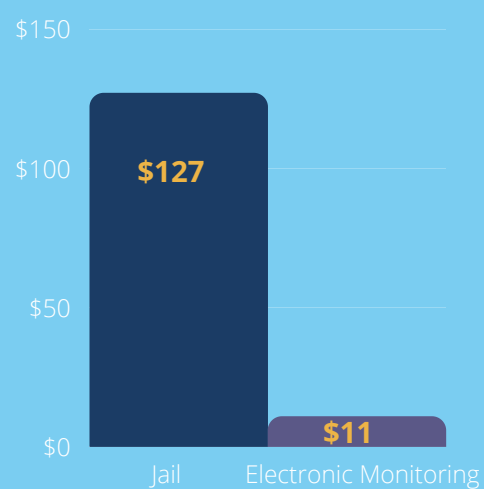
Meanwhile, money bail keeps people detained who do not need to be detained EVER, much less while awaiting trial, simply because they do not have money.

PRE-TRIAL DETENTION IS COSTLY

Detaining individuals in jail comes with enormous cost.

It costs \$127 per day to detain a person in Pima County.

Electronic monitoring costs only \$11 per day.



NAACP SEEKS TO ELIMINATE CASH BAIL

NAACP is actively advocating for the elimination of cash bail with our Arizona Constitutional Amendment proposal.

Money saved can be used to finance services in the community during pre-trial release, such as counseling, job training, education, and shelter.

SUPPORT NAACP PROPOSAL TO END CASH BAIL

THE SYSTEM MUST PRIORITIZE COMMUNITY SAFETY, NOT PUNISH POVERTY.
THE CURRENT SYSTEM ENDANGERS BOTH.

FIGHTING FORWARD

www.NAACPTucson.com
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Eliminate Money Bail in Arizona

NAACP Arizona State Conference

The Problem: Our Current Money Bail System is Broken

- Money Bail is often required to be paid as a condition of pre-trial release from jail following arrest, but before conviction.
- Some individuals arrested for first degree murder and sexual assault, who are likely to be sentenced to decades in prison if convicted, are able to pay bail and buy their release from jail until their trial. Although their behavior poses a serious public safety risk to the community, if they have the financial means, they are not held in jail. This is a serious public safety risk that has, in some instances, tragically resulted in additional victims in the community being assaulted and even killed.
- Meanwhile, many more individuals arrested for non-violent crimes such as shoplifting, trespassing, or drug possession are stuck in jail awaiting their trials, due to lack of funds to pay bail, serving weeks even months of time incarcerated, sometimes losing their jobs and housing, even though their sentence if ultimately convicted would be to probation, not incarceration.
- Detaining people in jail results in enormous costs to local law enforcement, courts, administration, and taxpayers. Jail cost is \$127 per person per day in Pima County. There are other ways to ensure that individuals who are arrested show up for their future court dates instead of caging them in the jail. Electronic monitoring costs only \$11 per day.
- Detention, even very brief, that is not necessary to protect public safety, but due to inability to pay, results in harm to those incarcerated and their families in areas of health, employment, increased recidivism, disrupted and displaced families, and damage to community wellbeing, and is therefore costly to society.

The Solution: NAACP Seeks Elimination of Money Bail - This Will Protect Public Safety and Decriminalize Poverty

- In 2016, the Arizona Supreme Court Task Force on Fair Justice for All recommended eliminating cash bail in this state via a constitutional amendment the legislature should refer to the people for a vote.
- The NAACP agrees and strongly supports the elimination of money bail.
- Money saved from reducing the number of people held in jail before trial can be used to pay for services for those people while they await their trials outside the jail in the community, including housing for the homeless, transportation, and counseling. These services will help the individuals themselves and their families, and will also help reduce their recidivism.
- Careful review of research on cash bail reform demonstrates how to avoid problems other states faced when attempting similar reforms. We have incorporated lessons learned into our Arizona Constitutional Amendment proposal. We ask that our State Legislature pass a Bill and refer the Constitutional Amendment to the voters in a Ballot Initiative in November 2022 that, if approved by voters, will take effect January 1, 2024.
- Under the NAACP proposal, Judges will retain discretion to hold in jail those whose behavior poses a high risk to public safety, and set conditions of release for the rest as alternatives to incarceration and money bail. We must stop confining people simply due to poverty.

“Cash bail is the front door to mass incarceration, creating a type of debtor’s prison.” (Vera Institute of Justice) The purpose of incarceration should be to keep the community safe, not to punish those who lack means. The current system both endangers public safety *and* criminalizes poverty.

Report and Recommendation on Cash Bail Reform for Arizona

Prepared by NAACP Tucson Branch, Unit 1013

October 4, 2021

The NAACP Legal Defense Fund has taken the position that there is a need to abolish money bail. "On any given day in the United States, more than 450,000 individuals - presumed innocent and not convicted of a crime - are held in local jails awaiting trial. Most are there simply because they cannot afford bail....With an annual price tag of more than \$15 billion, taxpayers are shouldering a high price for a failed system." <https://votingfor-justice.org>.

The NAACP National Convention in 2017 adopted a resolution to support bail reform in America as a part of importantly needed criminal justice reform and has reaffirmed that resolution opposing money bail.

The NAACP Arizona State Conference also has taken the position that there is an urgent need for bail reform.

The Tucson Branch has prepared this Report and Recommendation for the Arizona State Conference, setting forth information and a specific proposal for a state constitutional amendment that we believe can produce necessary reform. We affirm the NAACP's call for the total abolition of money bail in Arizona, and we recommend proposed alternatives to bail and bail bonds that can be applied in all cases to maintain public safety while eliminating use of money bail which criminalizes poverty. We advocate for this change now, either via state legislation or state constitutional amendment, because we believe it can receive bipartisan support and is achievable at this time.

We ask that the Arizona State Conference NAACP approve this Report and Recommendation and that the Political Action and Criminal Justice Committees and the various Branches be authorized to coordinate lobbying efforts in support of state legislation to remedy many of the problems associated with pretrial detention conditions that include cash bail and bail bonds and to actively promote a state constitutional amendment to eliminate cash bail and bail bonds altogether.

1. Why is the elimination of cash bail needed in Arizona?

"Bail was originally designed to incentivize people to show up for their court dates, but it has since evolved into a system that separates the financially well-off from the poor. It requires arrested individuals to pay money in order to get out of jail while they await trial. For those who can't afford bail, they wind up having to sit in jail, which means they may be at risk of missing rent payments, losing their jobs and failing to meet other responsibilities." (The Safety and Justice Challenge sponsored by the MacArthur Foundation)

"Cash bail system criminalized poverty, as people who are unable to afford bail are detained while they await trial for weeks or even months." (Center for American Progress)

"This causes the poor to be jailed and therefore have higher rates of conviction, longer sentences, higher recidivism, and increased likelihood of being sent to prison....Cash bail is the front door to mass incarceration,

creating a type of debtor's prison. More than half of Americans cannot afford an emergency \$400 expense." (Vera Institute of Justice)

As with other aspects of the criminal justice system. Black, Indigenous, and other People of Color, as well as people of Latino/a ethnicity, experience disproportionate negative effects from the cash bail system.

"The American Bar Association Criminal Justice Standards Committee published a pamphlet entitled "ABA Standards for Criminal Justice - Pretrial Release" that defines the purpose of the pretrial release decision as follows: "The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference.... The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support." (Arizona Supreme Court Task Force on Justice For All, p. 34, 2016)

"In Aug. 2016, US DOJ filed case that bail practice violates the 14th Amendment, which prohibits incarcerating without meaningful consideration of indigence and alternative methods of achieving a legitimate government interest, if without consideration of ability to pay and alternative methods of assuring appearance at trial, it results in pretrial detention of indigent defendants. Cash bail is violating due process and equal protection clauses. What about 'innocent until proven guilty?'" (Vera Institute of Justice, 2019)

"Arizonans are particularly skeptical of the state's criminal justice system, with just one in four (26%) agreeing that it treats everyone equally and almost half (45%) disagreeing....One proposed change to the state's criminal justice system meets with strong support across the political spectrum. More than three-fourths of Arizonans overall (77%) agree that the state's prisons should focus more on rehabilitation, including substance abuse, mental health and reentry programs and services. While almost nine in 10 Democrats (87%) in the state support this idea, so do strong majorities of Republicans (65%) and independents (79%)."

<https://www.arizonafuture.org/news-events/news/2021/5/arizona-survey-finds-consensus-in-politically-divided-state>

We believe Arizonans also would strongly agree that the counties' jails should stop being used in a way that impedes rehabilitation and entry into programs and services.

2. Bail reform was addressed in the 2016 Task Force Report of AZ Supreme Court: Fair Justice for All, which recommended ending cash bail, and undertaking other reform efforts.

In 2016, the Arizona Supreme Court Task Force on Fair Justice for All recommended eliminating cash bail and bail bonds. (See the full Task Force Report at: [https://www.azcourts.gov/Portals/74/TFFAIR/Reports/FINAL%20Fair-Justice%20Aug%2012-final%20formatted%20versionRED%20\(002\).pdf?ver=2016-08-16-090815-647](https://www.azcourts.gov/Portals/74/TFFAIR/Reports/FINAL%20Fair-Justice%20Aug%2012-final%20formatted%20versionRED%20(002).pdf?ver=2016-08-16-090815-647))

The Supreme Court Task Force believes that Arizona should strive to eliminate money for freedom and shift to a risk-based system. The Task Force stated that fully achieving this goal will require a constitutional amendment, rule changes, and a change in the current culture to substitute preventive detention for the current practice of imposing high-dollar bonds.

The Supreme Court Task Force concluded that a constitutional change should be referred by the legislature to the people to determine whether money surety can be eliminated from our system altogether and individuals whose behavior poses a high risk to the safety of an alleged victim or the community can be kept in jail without

the use of high-money bail or bail bonds, which are ineffectual when imposed for people who are wealthy, have wealthy family members, or are associated with wealthy criminal enterprises that can post bonds in amounts as high as hundreds of thousands or even millions of dollars.

The Arizona Judicial Branch has, as recommended by the Task Force, undertaken initiatives to improve the bail system, and “to this end, the Arizona Judicial Council and the Commission on Minorities in the Judiciary [issued] the following recommendations, among others, which are targeted for implementation in the Arizona state courts in 2021:

File Supreme Court rule petitions and amendments to the Arizona Code of Judicial Administration (ACJA):

- Allow representation of a defendant by a legal paraprofessional (LP) at an initial appearance hearing to assist with determining the amount of bail and other release conditions
- Require a review hearing if a defendant remains in jail after a judge sets a cash bond
- Modify the current rule clarifying that failure to post the required bail would be grounds for a review hearing
- Create a task force to make recommendations regarding plea bargains, sentencing and dispositions, addressing [among other things]: Clarify by rule, statute, or both, that small bond amounts (\$1-\$100) are not required to ensure that the defendant receives credit for time served when the defendant is also being held on another case.” (Arizona State Courts’ Racial Justice Initiatives, 2021)

Fair Justice Initiatives and Reforms from Arizona’s Court System (2021) reports the following reforms that had been proposed by the Task Force have now been achieved:

- Implemented a text and email notification system to remind people of court hearing dates to reduce defaults.
- Established practices that allow release decisions that protect the public but do not keep people in jail solely for the inability to pay cash bail.
- Modified court rules for setting conditions of release to provide that a person cannot be kept in jail solely for the inability to pay cash bail.
- Implemented pretrial services in all superior courts.
- Made rule changes to identify release conditions for people accused of crimes while they await trial that will protect the public and ensure appearance in court. Improvements include the following options: court-appointed counsel at initial arraignment, no-money bond, and preventing a monetary condition that results in unnecessary jail time before trial just because the person held in jail custody is unable to pay.
- Implemented the use of the Public Safety Assessment (PSA) intended to identify a person’s risk to commit a new crime while on pretrial release and the likelihood to attend future court hearings, giving maximum flexibility for keeping people at work and at home while their court case is pending.

In addition, the Arizona Supreme Court has now:

- Adopted a new rule that will become effective in 2022 permitting legal paraprofessionals (LPs) to represent arrestees at their Initial Appearances in court shortly following arrest at which conditions of release from jail are determined.

We applaud these initial efforts undertaken by the Arizona Supreme Court. We support legislation that may further its efforts to reform the system associated with determining conditions of release from jail for those who are arrested and concur with its recommendation that the cash bail system should be further reformed

with a constitutional amendment that will end the use of cash bail altogether. (We also urge that there be care taken with use of the PSA, which if not combined with other considerations has been demonstrated to have a disproportionate impact on BIPOC.)

3. What are the costs of having a cash bail system?

Nationally, on average, the per person daily cost of jail, excluding fixed building expenses, but including food, medical care, and security, is conservatively estimated at \$85. Roughly 450,000 people are detained before trial on any given day at a daily cost to U.S. taxpayers of more than \$38 million.

Annually, this \$14 billion is used to detain people who pose a low risk of committing future crimes, including many accused of crimes who ultimately will not be indicted and will have any charges dropped. By adopting commonsense policies that detain only people whose alleged behavior poses the highest risk to public safety, that same \$14 billion could be used to support the employment of 250,000 elementary school teachers, provide free or reduced lunch for 31 million children, or shelter and services for the nation's 50,000 homeless veterans, and homelessness prevention services for the 1.4 million veterans who are at risk of becoming homeless. [Further], the costs of pretrial detention far exceed the costs of alternatives to incarceration, including pretrial supervision.

Pima County Sheriff Chris Nanos issued a statement May 2021, which included this information: "I am currently working with our governmental partners to reduce the population of our jail and not only address over incarceration and recidivism rates but also save taxpayer dollars. By working with the Pima County Health Department, we can create a program that connects those suffering from mental illness and addiction with needed resources and treatment options. Jail is for dangerous criminals, not for people suffering from illnesses. By working with our courts, prosecutors, and defense attorneys to find jail alternatives for those serving time in our jail for low level, nonviolent misdemeanors, we not only provide for a safer community, we also save taxpayers millions of dollars. **Housing an inmate costs \$127 per day, whereas utilizing electronic ankle monitors costs \$11 per day, per inmate.** It's using technology to not only be more efficient, but it is also a more effective way to keep our community safe."

The cost of providing an individual with supportive housing in the community along with voluntary treatment is estimated to be only about 1/3 the cost of detention in the jail. An independent cost-benefit analysis of Pima County's Drug Treatment Alternative to Prison program published in 2017 by Michele Walsh, Ph.D. and Deirdre Avery, MS, MPH of the University of Arizona, Norton School of Family and Consumer Sciences, Community Research, Evaluation and Development Program revealed that the cost of treatment through community-based services, including housing and transportation as well as counseling and medication, is only 36% the cost for state prison (which is analogous to the cost for county jail). With just 60 participants per year, the DTAP program saved more than \$1 million.

Pima County Attorney Laura Conover campaigned and was elected on a platform calling for bail reform, demonstrating strong voter support, at least in Pima County, for the types of changes we are advocating. County Attorney Conover's office has undertaken significant efforts to reduce pretrial incarceration, and her input has informed this report. Conover supports the revised version of the proposed constitutional amendment as the revisions reflect her position that pre-trial incarceration should never be based on an inability to pay bail. She and her senior leadership team are eager to partner and continue to collaborate with any entities who are engaged in the elimination of incarceration based on indigency. To that end, the Conover administration is also researching the feasibility of statutory changes. Conover's administration has pledged assistance from the Civil

Division and is looking to hire a legislative aide. Conover will implement prospective changes to bail to assist with providing data on the feasibility of the proposed constitutional amendment and any statutory changes.

4. Who has been needlessly incarcerated? Example of individual who was incarcerated many times, and broke the pattern when referred to enter treatment and use community resource supports. Money saved.

“Within criminal misdemeanors, those charged with shoplifting (56 percent), property (58 percent), or drug offenses (52 percent) have a high rate of committing a subsequent offense or offenses. For example, a person convicted of shoplifting has a 47 percent chance of being convicted of additional shoplifting crimes (up to 10 or more) within 12 months. The same is true for drug [possession arrestees]. These are the repeat offenders who are frequently in and out of jail. Those experienced in dealing with these offenders note that many are addicts suffering from substance abuse issues. These [people arrested] are unlikely to pay their fines, and having them perform community restitution (service) is not always practical or in the interest of public safety.

“A second specialized group that is brought to court are those individuals exhibiting mental health issues. A number of individuals appearing in limited jurisdiction courts have been arrested for “quality of life” issues (i.e., shoplifting, urinating in public, trespassing, and loitering) and appear to have mental health concerns.” (Arizona Supreme Court Task Force on Justice For All, p. 30, 2016).

The Pima County Sheriff has reported that as many as 60% of the people detained in the Pima County Jail awaiting trial suffer from mental health issues. We know that a significant number of people detained in the Jail while they await their trials also suffer from substance use disorders (drug addiction). Many suffer from co-occurring disorders, both mental illness and addiction. These individuals are re-arrested disproportionately due to their inability to make it to scheduled court hearings, caused by these mental and behavioral health issues, and due to their untreated illnesses motivating their criminal activity. We believe that imposing bail and keeping such individuals who suffer from mental and behavioral health problems in Jail is inhumane and increases their future recidivism. We believe alternatives to incarceration involving community-based services, including therapeutic housing and treatment, can break the cycle of arrests and criminal behavior involving these people. There is evidence that such alternatives work.

A man named “Mr. S.” was arrested and incarcerated in the Pima County Jail 41 times over an 18-month period, just before the date several years ago when the Sheriff put together a list of the top 15 super-utilizers of the Jail. Mr. S. was at the top of the list.

Using grant funding the Pima County Attorney had obtained for treatment in lieu of incarceration, he was offered housing at a residential treatment facility in Tucson, Amity Foundation, as a condition of his release from pretrial custody and was then offered a plea agreement to stay there as a condition of his Probation. He accepted. Over the ensuing three years, he was not arrested once. He had zero days incarcerated at the Jail. It was an overwhelming success for this man’s life, and it saved lots of aggravation for the Circle Ks where he had been convicted of repeatedly trespassing and shoplifting. It saved dozens of hours of police time that otherwise would have been spent arresting and transporting and booking him into the Jail. And it saved about \$3,000 per month in Jail costs. It also saved the cost of Tucson City prosecutors and Pima County Attorney prosecutors, as well as court staff and judges processing his cases.

The case of Mr. S. was used as a model to develop and apply for grant funding to implement a new Consolidated Misdemeanor Problem Solving (CMPS) Court, which was successful. CMPS Court now offers pre-trial diver-

sion with treatment for individuals who are repeatedly arrested and jailed due to their suffering from substance use disorder and mental illness.

CMPS Court was then used as a model to develop and obtain grant funding for Pima County Superior Court's new Supportive Treatment and Engagement Programs (STEPS) - a pre-indictment felony diversion program offering housing and treatment in lieu of incarceration in the Jail.

Data publicly released by Pima County Attorney Laura Conover has demonstrated the success of the STEPs Program, which she implemented shortly after taking office. Releasing arrestees from jail without imposing money bail and providing them with services in the community has improved outcomes. There has been a measurable reduction in the number of individuals in Pima County indicted for felony possession of drugs for personal use.

5. What are the costs to the lives of individuals, families and communities of those individuals who were kept incarcerated for minor crimes, including victimless crimes, due to inability to pay bail?

"Courts, the Department of Justice (2016), and many criminal justice stakeholder groups and foundations throughout the United States are joining in pretrial justice reform efforts with the goal of eliminating a "money for freedom" system, often based on the individual charge — not on the risk the defendant poses—and replacing it with a risk-based release decision system. The goal is to keep the people who pose a high risk to commit new crimes in jail, and release those who pose a low- and medium-risk regardless of their access to money.

"Even short pretrial stays of 72 hours in jail have been shown in national and a local Arizona study to increase the likelihood of recidivism. (*The Hidden Costs of Pretrial Detention*, 2016, Cotter, Ryan, and Justice System Planning and Information) Pretrial incarceration can cause real harm, such as loss of employment, economic hardship, interruption of education or training, and impairment of health or injury because of neglected medical issues.

Requiring a person who has been accused of a crime to post money to get out of jail does not ensure that the person will be more likely to return to court, nor does it protect public safety. Indeed, in analyzing more than 750,000 cases, a study financed by the Laura and John Arnold Foundation found that in two large jurisdictions, "nearly half of the highest-risk defendants were released pending trial." Some of the individuals who were calculated to present the highest risk of committing future crimes are likely to have access to money to post a cash surety. "Communities are better served by assessing the risk defendants pose and their likelihood of appearing for their future court hearings." (Arizona Supreme Court Task Force on Justice For All, p. 33, 2016)

- Arrestees who are calculated to present a low risk that they will commit new crimes and who are detained four or more days have increased odds of recidivism compared with those who are not detained in jail.
- Individuals detained:
 1. 4-7 days were 49% more likely to recidivate within 12 months of release
 2. 8-14days were 54% more likely to recidivate within 12 months of release
 3. 15-30 days were 84% more likely to recidivate within 12 months of release
 4. 31+ days were 78% more likely to recidivate within 12 months of release
- Recent Studies and Research:
 1. call into question whether pretrial detention improves court appearance rates;

2. suggest that people who are detained in Jail are more likely to be convicted and to receive harsher sentences due largely to missing dismissal, diversion, and plea-bargaining opportunities that pretrial release provides;
3. indicate that even short periods of Jail detention may make people more likely to become involved with the criminal justice system again in the future;
4. have found that people of color who are charged with the same crimes and who have similar histories of criminal justice involvement as white people are more likely to be detained pretrial and have bail set in higher amounts;
5. have also shown that keeping such individuals locked up for as few as three days can have dangerously destabilizing effects. They risk losing their homes, their jobs, and their families. Moreover, unnecessary pre-trial detention raises questions of whether public resources are being used effectively. (“The State of Pre-trial in America,” Pretrial Justice Institute, 2017)

6. What other state attempts, successes/failures with bail reform can inform our planning?

We reviewed bail reform laws proposed and adopted in eight other jurisdictions: California, New Jersey, New Mexico, Texas, Alaska, Washington, D. C., New York, and Illinois. We learned that the most successful was that adopted and implemented in New Jersey and that California’s proposed bail reform law also had some good provisions. We also learned about problems experienced in the implementation New Mexico’s bail reform law and found that others have issues, as well. Ultimately, we took the best from each of the successful provisions we found in other jurisdictions’ bail reform laws to propose a bail reform law for Arizona in the form of a proposed constitutional amendment.

Here is what our research from the other jurisdictions revealed:

California: A bill known as SB 10 eliminating cash bail was blocked, by criminal justice advocacy groups, who said the proposed changes favored detention and gave judges too much power and relied too heavily on risk assessment tools. Bail bondsmen also opposed the Bill. Pretrial assessment tools are chosen on a county basis, and often reflect bias based on race or ethnicity.

“The fundamental flaw of SB 10 was that it replaced the ... practice of unfettered discretion to impose unaffordable bail amounts with something potentially worse—unfettered discretion to indefinitely detain people pretrial.” (Vera Institute, 2019)

New Jersey: adopted a statewide Bail Reform Act effective January 1, 2017, under which state judges must use an algorithm in a Public Safety Assessment - PSA (pretrial risk assessment tool) that accounts for flight risk and perceived dangerousness, before deciding if an arrestee should be released from jail custody before trial. The judge maintains discretion, however, to decide whether to consider other factors that go unaccounted for in the algorithm, and to attach conditions to a person’s pre-trial release from Jail custody to ensure his return to court. Judges in New Jersey are permitted to detain individuals accused of violent felony crimes without bail, but only after the court conducts a hearing that adheres to due process standards. (New Jersey reduced the number of people held in pretrial detention by 44% after this 2017 law passed. - Marshall Project. 10/2020)

However, one significant problem has been revealed with regards to the New Jersey Bail Reform Act. Racial disparities persist in New Jersey’s pretrial jail population following implementation of this bail reform law. This is likely due to the factors considered in the PSA - which includes and heavily weighs the factor of prior criminal

history, thereby scoring as higher risk Black individuals who may have been disproportionately targeted for arrests in the past for non-violent, non-dangerous crimes such as simple possession of drugs for personal use or trespassing or shoplifting food.

“Troublingly, the majority of people released under New Jersey’s new bail scheme were subject to onerous pre-trial conditions—only 9 percent of people arrested in New Jersey in the first three quarters of 2019 were released on their own recognizance, while 27 percent were subject to weekly phone and in-person supervision, and 6 percent to electronic monitoring or home confinement.” (Vera Institute, 2019)

“In 2019, New Jersey released a report showing that people released as a result of the state’s bail reform are no more likely to commit new offenses or fail to show up for court appearances than people released under the prior system of money bail.” (Vera Institute, 2019)

New Jersey was successful with bail reform after it spent years of intensive planning and consensus building across a broad array of stakeholders: civil rights groups, law enforcement, politicians, courts, community. (NPR 2/22/21)

New Mexico: In 2016, New Mexico’s legislature and voters adopted a constitutional amendment to implement bail reform. Support for this constitutional amendment was overwhelming; 91% of legislators and 87% of voters voted in support. The next year, in 2017, the New Mexico Supreme Court adopted new rules regarding bail to enforce the constitutional amendment.

New Mexico’s bail reform helps protect public safety by permitting the detention of people who have been arrested where clear and convincing evidence presented to a judge shows they pose a particular threat of danger to public safety. And New Mexico’s bail reform prevents incarceration based on poverty by providing that no one can be detained based upon an inability to pay bail. Only those demonstrated to present a danger to public safety or a flight risk can be held in pretrial detention.

In an April, 2021, presentation to our NAACP Tucson Criminal Justice Committee, Albuquerque District Attorney Raúl Torrez, who is a national expert and advocate for bail reform, recommended, based upon his experience, that Arizona go slowly with incremental changes in the law and emphasized that under promising and over delivering is an important strategy to maintain long-term public support for bail reform. He recommended that Arizona adopt a hybrid of the New Jersey and California models due to problems with unintended consequences he has experienced in Albuquerque with public safety resulting from implementation of the New Mexico model. He discussed a recent homicide committed by a man on pretrial release as an example. He noted that the New Mexico bail reform law is now under public attack due to these problems.

He recommended that a constitutional amendment should be adopted in Arizona but that it should not be too rigid; it should provide maximum flexibility by judges while still imposing a presumption of pretrial detention for those who are accused of some severely violent crimes. He suggested that an ability to expand the types of crimes in which there is a presumption of detention be made possible by way of legislation, rather than requiring another constitutional amendment, so that there is a somewhat nimble ability of the legislature to adjust more broadly or more narrowly based upon results of application of the bail reform provision put into the state constitution.

District Attorney Torrez also discussed the Arnold Foundation's Public Safety Assessment (PSA) risk assessment tool, which is relied upon as part of New Mexico's bail reform process, including problems with how judges interpret and rely upon PSA results. He suggested that Arizona's bail reform program will need to accommodate problems with the PSA, including racial and ethnic disparities as well as underweighting danger to public safety and security. He also emphasized that for bail reform to be effective, it must be accompanied by enhanced Pre-trial Services monitoring along with social services, including housing and treatment for substance use disorders (addiction) and for mental illness. He said the absence of this in his jurisdiction has resulted in an epidemic of store robberies and a community feeling of lack of safety. District Attorney Torrez also discussed restorative justice programs and the value of expanding the Pima County Attorney's renowned Community Justice Boards that provide diversion for juveniles so that this type of program would be available to adults (as Pima County Attorney Laura Conover intends to pursue).

Texas: In April 2017, a federal judge in Houston ruled that by failing to take into account the individual circumstances of people who had been arrested, the Texas bail system is "fundamentally unfair" to poor people and unconstitutional.

- As a result, in Harris County, most people charged with misdemeanors are released without a hearing or bail.
- For misdemeanors presenting public safety risks, people who have been arrested are not automatically released. They get a hearing at which magistrates have the usual options (bail, monitoring, etc.)
- Defense attorneys now represent people at bail hearings. Previously they had no defense at these hearings. Judges also must give greater attention in deciding on bail requirements.
- In the current legislative session, there have been several bills introduced which essentially roll back the reforms instigated by the 2017 Court order. In addition, Governor Greg Abbott is supporting the bills which would impose bail bonds again, but don't address the circumstances of people who have been detained in Jail custody and their ability to pay bail.

Alaska: Alaska passed a bill in 2018 that largely eliminated cash bail for people awaiting trial as part of an effort to reduce the state's ballooning jail population. (Marshall Project, 10/2020) It said people would no longer be held in jail simply because they're too poor to pay their bail. Instead, the newly created Pretrial Enforcement Division—part of the Alaska Division of Corrections—would develop a risk score assessment that helps to determine the likelihood that a person will show up to their court dates or commit a new crime if released. People charged with violent crimes or who receive a high-risk score would still have bail bonds set in their case, and will most likely remain incarcerated until trial. Others charged with lower-level crimes or who receive a low-risk score will be released on recognizance, remaining under supervision by pretrial service officers. However, critics have referred to the program as "catch and release," and there has been substantial political push-back. Governor Dunleavy has reversed this criminal justice reform, with a new crime bill that requires much harsher sentencing.

Washington, D.C.: eliminated cash bail in 1992. In 2017, 94% of people were released pretrial without cash bail, and 88% showed up for all of their court dates. (Marshall Project, 10/2020) Per D.C. Superior Court Judge Truman Morrison, of those "86% were never arrested for any criminal offense of any kind. And of the very small percent of people that were arrested in D.C. that we released, less than 2% were rearrested for a crime of violence....Our goals ... are to ensure community safety and to ensure a court appearance and to get as many people to remain at liberty without their lives being destroyed as possible. If you think about those

goals, money bail is a joke.... There's a lot of controversy about the use of risk assessments....That it's biased especially against people of color...We need to be refining our use of risk assessments as much as we can. But the alternative is to do it the way we've always done it, which is to rely on judicial hunch and money, which of course, makes no sense... Justice Jackson in the Supreme Court in a case called *Stack v. Boyle* - to paraphrase him - that there is always an element of risk in making a release decision before a trial. That's the price of our ordered system of liberty and justice. The only way to get a complete assurance of safety is, of course, to incarcerate everyone, which is not the American way." (NPR Interview by Melissa Block, 9/2/18)

New York: 2019 Bill eliminated bail for most nonviolent offenses, but was rolled back 3 months after taking effect, after the NYPD reported a spike in crime and blamed the law, although those claims are disputed. (Marshall Project, 2020) These roll back changes mean bail will be an option for more crimes, but the heart of the law remains intact, and judges are still required to release people with least restrictive conditions necessary to reasonably assure return to court, with cash bail prohibited for most misdemeanors and nonviolent felonies. (Brennan Center 4/16/20)

Illinois: "Illinois Gov. J.B. Pritzker signed a bill [February 2021] that makes Illinois the first state in the country to abolish cash bail payments for jail release for people who have been arrested and are waiting for their case to be heard." NPR, (2/22/21) There has been strong opposition from Law Enforcement Coalition, saying it is threat to public safety. Judges will not be able to detain a suspect in instances such as witness intimidation, most robbery, burglary and arson. But Sharon Mitchell, head of Illinois Justice Project said threats of increased crime are not substantiated, citing experiences in other jurisdictions, Washington D.C. and New Jersey. (NPR) 2016 - hundreds were in Cook County jail for nonviolent crimes due to inability to post bail of \$1,000 or less. 2017 - Chief Cook County Judge required judges to set lowest possible bail while not jeopardizing public safety. Many were released and Loyola Study showed these releases did not result in more violent crime. This elimination of bail will go into effect in January of 2023. Successes in other states show critical need for "ramp up time" to allow for investment in services to monitor and help those not jailed, plus more pretrial probation officers to track defendants, with supports such as reminders of court dates and transportation to court appearances, and more money for substance abuse and mental health treatment.

7. We Conclude Arizona Needs a Statutory Change or Constitutional Amendment to Eliminate Money Bail.

Based upon what we have learned from our research, combined with the recommendation of the Arizona Supreme Court, the National NAACP and the NAACP Legal Defense Fund, we have concluded that Arizona needs a statutory change to improve the system associated with determining conditions of release for those who are arrested and also needs a constitutional amendment to eliminate money bail and bail bonds altogether.

Arizona's Constitution currently addresses the issue of bail and other restrictions on pre-trial release from jail custody in Article 2, Sections 15 and 22. (<https://law.justia.com/constitution/arizona/2/15.htm>; <https://law.justia.com/constitution/arizona/2/22.htm>)

Arizona Revised Statutes address the issue of bail and other restrictions and conditions of pre-trial release from jail custody in A.R.S. sections 13-3961, 13-3962, 13-3963, 13-3964, 13-3965, 13-3967, and 13-3968. (<https://www.azleg.gov/ars/13/03961.htm>; <https://www.azleg.gov/ars/13/03962.htm>; <https://www.azleg.gov/ars/13/03963.htm>; <https://www.azleg.gov/ars/13/03964.htm>; <https://www.azleg.gov/ars/13/03965.htm>; <https://www.azleg.gov/ars/13/03967.htm>; <https://www.azleg.gov/ars/13/03968.htm>)

Arizona Supreme Court Rules address the issue of bail and other restrictions and conditions of pre-trial release from jail custody in Rules 4.2, 7.2, and 7.3, Arizona Rules of Criminal Procedure. ([https://govt.westlaw.com/azrules/Document/N9BE7E0E0A2EC11DEA301E57D8E5330AC?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/Document/N9BE7E0E0A2EC11DEA301E57D8E5330AC?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)); [https://govt.westlaw.com/azrules/Document/NEB5B98E1E98D11E9BEFE89A994168F89?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/Document/NEB5B98E1E98D11E9BEFE89A994168F89?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)); [https://govt.westlaw.com/azrules/Document/N7A67CDC0A2E411DEA301E57D8E5330AC?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/Document/N7A67CDC0A2E411DEA301E57D8E5330AC?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)))

Arizona Supreme Court Order No. R-21-022, filed August 30, 2021, Amending Rules 6.1, 7.2, and 7.2 of the Arizona Rules of Criminal Procedure, will become effective January 1, 2022. This is the new Rule that will allow legal paraprofessionals (LPs) to provide representation to arrestees at their Initial Appearances where conditions of release from jail are determined. The new Rule also provides a mechanism for a judge at a subsequent court hearing to re-evaluate bail if the defendant is unable to post bond due to his or her financial condition.

Judges of the Superior Court, Justice Courts, and Municipal Courts apply these provisions of the Constitution, Statutes, and Rules to render their decisions regarding the imposition of bail and other restrictions and conditions of pretrial release from jail custody in individual cases, applying them to the specific facts and circumstances of each case and to the information they have regarding each person arrested at his or her initial appearance in Court.

The Constitution is intended to be a general guide for courts setting forth the defined scope and limitations of their authority. The Constitution sets forth broad policy provisions and leaves to the Legislature adoption of specific implementing Statutes and leaves to the Supreme Court adoption of specific implementing procedural Rules, which are then applied by individual judges utilizing their discretion to impose specific details tailored to the circumstances of each individual person appearing before them following arrest or summons accusing the person of a crime.

Article 2, Section 15 provides that bail should not be excessive. If pursuing a constitutional amendment, we would adjust this section to remove the term excessive, and instead eliminate all money bail.

Article 2, Section 22 provides that persons “charged” with crime shall be bailable with some exceptions and sets forth the purposes of bail and any other conditions of relief in priority order, listing as the first priority assuring the appearance of the person accused for future court hearings, and listing as the last priority protecting the safety of the victim and others in the community. If pursuing a constitutional amendment, we would make several changes to this section. First of all, felony “charges” generally are not filed until approximately 10 days following an individual’s arrest. Anyone who is arrested or summoned to court and accused of committing a crime should have the right to pretrial release from the time of their initial appearance within 24 hours of arrest, not dependent upon subsequent prosecutorial charging. We would also apply this to those who have been summoned into court for accusation of committing a crime. More importantly, we believe public safety ought to be the first priority. There are many conditions that a judge might impose upon a person as a condition of their release from jail while they await trial, we believe these conditions should be listed and that no conditions should be imposed unless absolutely necessary. Finally, we believe money bail should no longer be allowed to be imposed in order for a person to be released from jail, since that criminalizes poverty.

Our draft proposal for a Constitutional Amendment is attached as part of Appendix A, which sets forth the text of the current constitutional provisions relating to bail and our proposed amendment language. We are in the process of collaborating with the Pima County Attorney's Office, which is developing a draft proposal for a statutory change that might be a first step towards a constitutional amendment or might be adopted along with a constitutional amendment.

8. Discussion of the Components of our Draft Proposed Constitutional Amendment for Arizona:

In order to remedy the problems associated with the cash bail system in Arizona, and mindful of the successes and failures of remedies attempted in other jurisdictions, we drafted our proposal to amend the state constitution in such a way as to prohibit the imposition of money bail. It is simple, straightforward, it poses no significant threat to public safety, and it would save every county in Arizona significant financial costs at local jails. It also would reduce recidivism.

We recommend changes that would remove jail detention of many people while they await trial, focusing instead upon conditions that can be imposed upon individuals who are released into the community during the time they await trial if and when necessary to protect public safety and to ensure they appear for their court hearings. People can be monitored if needed, and referred to places where they might receive relevant services while on pre-trial release in the community, as necessary to help prevent them from committing future crimes and to help them to appear for future court hearings. Such services might be paid for in the short run with the Justice Reinvestment Fund monies generated from taxes on marijuana sales and/or from monies generated from settlements of state and local governments' lawsuits against pharmaceutical companies responsible for the opioid epidemic, and paid for in the long run with tax savings from reduced jail costs.

Our proposed constitutional provision strengthens existing statutory provisions in A.R.S. section 13-3967(D)(2), (5), and (6) by enshrining in the constitution the judicial discretion and authority to craft the types of appropriate pretrial release conditions that are alternatives to incarceration and provide alternatives to money bail as a means to protect public safety and assure appearance of people accused of crimes at their future scheduled court hearings. These include: a prohibition against leaving the county or the state, or a requirement to reside in housing approved by a pretrial services officer, a prohibition against possessing weapons, a prohibition against using alcohol or drugs (other than as prescribed), a prohibition against contacting the victim, a prohibition against returning to the location of the crime, a requirement of supervision by a pretrial services officer, the option for a third party custodian, and a requirement of electronic monitoring.

Our proposed constitutional amendment does not require a judge to impose any of these conditions and, indeed, provides that a judge must not impose any condition that is not absolutely necessary to protect public safety or assure the appearance of the accused at future court hearings. It allows a judge to impose one or more conditions only if and when the judge has determined doing so is necessary to protect the safety of alleged victims or witnesses, or to assure the person will appear for future court hearings.

Moreover, if the judge does impose a condition, the judge retains discretion to provide exceptions. For example, if a judge imposes the condition of prohibiting the person who has been accused of committing a crime from leaving the county or the state, our constitutional amendment preserves the discretion of the judge to provide such exceptions as allowing the person to travel for emergency reasons, such as to visit a sick family member in another state or to attend to necessary job duties in another county. And, the judge might impose further detailed conditions, such as requiring the person who has such an emergency reason to travel to contact a pretrial officer before traveling and provide contact information to that officer, such as address and

phone number of the relative they are visiting, airline travel information, or hotel information. These types of discretion exist under the constitutional and statutory and rules schemes currently in effect, and these types of discretion would be preserved.

Similarly, our proposed constitutional amendment allows, but does not require, a judge to impose the condition that the person being released from jail custody must reside in housing approved by a pretrial services officer if and when the judge determines it is necessary for that specific person. In deciding whether to impose this condition, the judge may consider factors such as whether the arrest was for domestic violence by an individual who resides with the alleged victim and should be ordered to find an alternative residence while his case is being adjudicated, or whether the person being released from jail custody suffers from homelessness and substance use disorders and may need supportive housing with treatment and other services available on a voluntary basis to help him avoid committing new crimes while on release and to be available for transportation from a known location to court for future hearings. The Court's Pretrial Services agency should consider such factors as whether a location where the person proposes to reside is one where there are family members or friends or a custodian who can provide a supportive environment to facilitate the person's success at complying with other pretrial conditions of release and appearance at future court hearings, what ability the person has to pay for housing, and what low-cost or free housing, transportation, other services, and funding are available to be provided by a non-profit or government agency to the person who is on pretrial release from jail custody.

We are aware that there is currently a shortage in most, if not all, counties of appropriate low-cost or no-cost housing for people who have been arrested and are out of custody on pretrial release who cannot afford appropriate housing. This is an issue that must be addressed through federal, state, county, and municipal appropriations. As is noted in our Report, in order for bail reform to succeed, it is important that such resources be made available. Pima County's new STEPs Program has obtained federal grant funding and has collaborated with community-based non-profit agencies to obtain supportive housing with treatment services, as well as transportation to and from court, for people arrested or summoned and accused of felony drug possession, thus enabling the Pretrial Services Division of Pima County Superior Court to inform judges that such transportation and housing is available, which facilitates the ability of judges to impose this condition as a condition of release for those individuals. This is a model that should be adopted statewide. It should be noted that community-based supportive housing with treatment services costs far less than housing in the jail. Shifting resources from jail funding to public or community-based nonprofit housing alternatives is a win-win. It will reduce recidivism while at the same time reducing the cost to taxpayers.

We believe that funding may become available within the next year to two years via appropriations from the U.S. Congress and/or via settlement of the litigation against pharmaceutical companies that manufactured and distributed opioids in a way that was a major contributing factor to the opioid crisis. So, this is an opportune time to be shifting towards a community-based treatment alternative to incarceration for those awaiting trial on criminal charges.

Our proposal is that there should be a start date 1-2 years after passage of reform, (e.g., January 1, 2024), to allow time for system to adjust regarding adaptation of pretrial staff and identification and expansion of community-based services for possible increased support options, to help ensure people on pretrial release are successful at refraining from committing new crimes and return for future court appearances.

Our draft constitutional amendment proposal is attached as Appendix A. It would retain and strengthen provisions for presumptive pretrial detention of people arrested or summoned based on an accusation they com-

mitted violent crimes whom there is evidence to believe likely have committed capital murder, rape, and similarly heinous crimes adding first degree murder to the list, allowing those few people accused of the worst of the worst crimes to be held without bail while they await trial. Presumption of detention will remain in place only for people accused of these heinous violent crimes. Only those who pose a serious public safety risk will remain incarcerated in the jail under law enforcement control 24 hours a day. By contrast, for those who are accused of lesser crimes, conditions of release will be the least restrictive possible. Supervision and monitoring will be provided, only when necessary, by Pretrial Services officers who will keep in contact with those on release while they await trial. Pretrial Services officers will work in collaboration with social workers and agencies providing community-based services. While funding would be required for Pretrial Services and community-based services, this funding would be offset by savings of greater amounts garnered from the reduction in jail populations.

Our proposal does not mandate reliance upon the PSA (pretrial assessment tool) from the Arnold Foundation, because it has been determined to have a disproportionately harmful effect upon Black, Indigenous, and other People of Color, as well as those of Latino/a ethnicity and low-income persons. Also, while we believe risk to public safety and flight risk should be the primary focus for detention decisions, we believe the PSA does not adequately measure these factors. Instead it gives too much weight to likelihood to repeat criminal activity (even non-violent, victimless criminal activity, such as trespassing or using drugs) and to fail to appear for court hearings (even if due to a person's lack of transportation, inability to miss work, or illness, as opposed to fleeing the jurisdiction).

The Arnold Foundation Public Safety Assessment has been adopted by approximately 38 jurisdictions, including the states of Arizona, Kentucky, and New Jersey—as well as three of the largest cities and two of the largest jail systems.

Concerns regarding reliance on this PSA include: insufficient assessment of risk of violence, too much reliance on number of past non-appearances in court for those accused of low level misdemeanor crimes. Strong precautions against bias are needed to protect BIPOC. Arizona's Supreme Court has required the Superior Court in Pima County, and all other counties, to utilize the same PSA used in New Jersey, i.e., the Arnold Foundation PSA risk assessment instrument, a proprietary assessment tool.

The Arnold Foundation, a private institution, has been unwilling to share its proprietary algorithm or background data, though one can identify the factors it weighs most heavily by reviewing the PSA questionnaire itself. The Arizona Supreme Court, and other courts across the country, declined to require the Arnold Foundation to share its algorithm and background data before accepting and implementing the Arnold Foundation's PSA. (Pima County's Pretrial Services Division of the Superior Court previously administered its own locally-validated risk assessment tool based upon publicly-available data, but changed to the Arnold Foundation's PSA at the direction of the Arizona Supreme Court.) A copy of the Arnold Foundation PSA being implemented by the Arizona Courts can be obtained from Domingo Corona, Director of Pretrial Services for the Pima County Superior Court.

Instead of relying upon the PSA, our proposal focuses upon the nature of the crime of which the person is accused and whether there is an identifiable threat posed to public safety if that person is released while he or she awaits trial.

Nevertheless, our proposal does not prohibit use of the PSA or other pretrial risk assessment tool as one factor to consider among other factors. We are mindful that the NAACP National Convention adopted a resolution in 2019 supportive of the use of pretrial risk assessments as a means of implementing bail reform.

Additionally, there is strong support in our state for continuing use of the specific domestic violence risk assessment - the Arizona -Intimate Partner Risk Assessment Instrument System (APRAIS) adopted by the Supreme Court that considers risks to the alleged victim and informs judges' decisions about what conditions to impose upon release of those arrested for domestic violence crimes. In fact, the use of this type of domestic violence risk assessment tool is consistent with our proposed constitutional amendment on bail reform, which focuses the judge's attention on safety of the victim or the community as the most important factor to consider in setting conditions of release, such as prohibiting the person released from jail from possessing weapons or contacting the alleged victim while he awaits trial.

9. Strategy for Adoption of Legislation and/or a Constitutional Amendment to Achieve Bail Reform:

There may be a statutory means by which to achieve some of the same results as our proposed Constitutional Amendment, and we are in the process of exploring that option along with the Pima County Attorney's Office. When that process has been completed, we will present draft proposed legislation to the State Conference for review and approval. Then, the strategy for obtaining its adoption would be to approach sympathetic legislators from both parties prior to the upcoming legislative session and ask them to sponsor, introduce, and commit to garnering support to pass that legislation. Prior to commencement of the legislative session, we would hold information forums throughout the community to explain the need for and importance of this statutory change, and to explain that it will enhance, not impede, public safety. Once the legislation is introduced, we would coordinate a lobbying effort among our membership and in collaboration with other community based organizations to advocate that state legislators vote in favor of the legislation and that the governor sign it into law.

Meanwhile, we ask that the Arizona State Conference NAACP and all the Arizona Branches of the NAACP strongly advocate for a state Constitutional Amendment along the lines of what we have proposed in Appendix A.

There are two means by which to refer a state constitutional amendment to the people to change the cash bail system. The first is that the legislature can do so. The second is that a ballot initiative submitted based upon petition signatures can do so. The first method would not cost money and would not require a massive grass-roots effort to gather petition signatures; whereas, the second would require both lots of money and a massive grass-roots effort.

Accordingly, we recommend that the proposed state constitutional amendment that we have drafted and presented in Appendix A be presented to friendly legislators to be introduced in the upcoming legislative session and then follow the same strategy we would follow for regular legislation.

10. Considerations to Help Bail Reform Legislation and Constitutional Amendment Pass and not be Rolled Back:

- Specify how much money will be saved, from reduced costs of daily jail stays, and reduced transports of people from jail to court.

- Build bipartisan support. Build coalitions to support ballot proposal for constitutional amendment. Provide talking points and other communication to legislators, community organizations to sign on, and other relevant contacts. Educate communities on significance of bail reform proposal. Failing to take into account the individual circumstances of people who have been arrested and accused of crimes, has been found “fundamentally unfair” to poor people and unconstitutional (Federal Judge in Texas lawsuit). If there are Arizona cases on this question, we could share them with media and others.
- Collect statistics on violent crime before and after implementation of bail reform to refute opponents claims that it leads to more crime. Cite states that have proved this.
- Anticipate opposition from bail bondsmen and the private incarceration industry, possibly law enforcement, possibly prosecutors. Work to provide information on the benefits of reform.

11. Conclusion

Whereas:

- The use of cash bail in Arizona disproportionately and negatively impacts Black, Indigenous, and other People of Color, as well as people of Latino/a ethnicity and those with low wealth, unnecessarily detaining people who cannot pay, and causing substantial harm to individuals’ health and employment, causing family disruption, damaging community wellbeing, and increasing the risk of more extensive incarceration and recidivism;
- The use of cash bail causes significant unnecessary expense to local law enforcement, courts, administration, and taxpayers, including jail costs (\$127 per person per day in Pima County), and diverts resources from addressing true public safety;
- The purpose of incarceration should be to keep the community safe, not to punish those who lack means;

Therefore:

- In order to eliminate cash bail in Arizona, and to reserve pretrial detention only for those who truly threaten public safety, **we recommend advocating now for state legislation to improve the system by which conditions of release are established for those who are arrested, and for a state Constitutional Amendment along the lines of the draft proposal attached in Appendix A** to be approved by the Arizona State Legislature and then proposed by the Legislature as a Ballot Initiative in November 2022, and if approved by voters, take effect January 1, 2024.

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Respectfully submitted by
 Dr. Cheree Meeks, President
 NAACP Tucson Branch, Unit 1013
 October 4 , 2021

APPENDIX A

BAIL REFORM: PROPOSED CONSTITUTIONAL AMENDMENT

The NAACP-Tucson Branch proposes that the Arizona State Constitution be amended to eliminate cash bail. This document sets forth: (1) current Arizona Constitutional provisions regarding bail set forth in Article 2, Sections 15 and 22; and (2) proposed revised versions of these Sections.

1. Current AZ Constitutional provisions regarding bail:

Article 2, Section 15. Excessive bail; cruel and unusual punishment

Section 15. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Article 2, Section 22. Bailable offenses

A. All persons charged with crime shall be bailable by sufficient sureties, except:

1. For capital offenses, sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age when the proof is evident or the presumption great.
2. For felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge.
3. For felony offenses if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community and if the proof is evident or the presumption great as to the present charge.
4. For serious felony offenses as prescribed by the legislature if the person charged has entered or remained in the United States illegally and if the proof is evident or the presumption great as to the present charge.

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.
 2. Protecting against the intimidation of witnesses.
 3. Protecting the safety of the victim, any other person or the community.
-

2. Proposed constitutional amendment:

We propose to amend Article 2, Section 15, so that it will now provide as follows:

Article 2, Section 15. Bail; fines; cruel and unusual punishment

Section 15. Money bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

We propose to amend Article 2, Section 22, so that it will now provide as follows:

Article 2, Section 22. Release from Jail Custody

A. All persons taken into jail custody following arrest or summons accusing them of committing a crime shall be presumed eligible for pretrial release, except a person who is accused of:

1. a capital offense, first degree murder, sexual assault, sexual conduct with a minor under fifteen years of age, or molestation of a child under fifteen years of age and where there is probable cause.

2. a violent felony offense committed when the person arrested or summoned for that violent felony offense is already on pretrial release for a separate felony accusation and where there is probable cause.
 3. a felony offense if the person arrested or summoned threatens the physical safety of any other person or the community and if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community where the proof is evident or the presumption great as to the present accusation.
 4. a serious felony offense as prescribed by the legislature if the person charged has entered or remained in the United States illegally and where the proof is evident or the presumption great as to the present accusation.
- B. A judicial officer may impose conditions of release if necessary to:
1. Protect the safety of the alleged victim, any other person or the community.
 2. Protect against the intimidation of witnesses.
 3. Assure the appearance of the person accused at future court hearings.
- C. Conditions of pretrial release set by a judicial officer must be the least restrictive necessary to protect public safety and assure appearance of the person accused.
- D. Conditions of pretrial release may, if necessary, include:
1. A prohibition against possession of weapons.
 2. A prohibition against contacting or communicating with the alleged victim.
 3. A prohibition against returning to the location of the alleged crime.
 4. A prohibition against leaving the county or the state.
 5. A prohibition against consuming alcohol or drugs (other than as prescribed by a physician for a diagnosed medical or mental health condition).
 6. A requirement to reside in housing approved by a pretrial services officer, which may include a residential facility that offers voluntary mental or behavioral health treatment.
 7. Agreement to reside with or maintain contact with an identified third-party appointed to serve as custodian.
 8. A requirement of supervision by a pretrial services officer.
 9. A requirement of electronic monitoring.