

UNEQUAL JUSTICE



December 2016

bail and modern day debtors' prisons in Nebraska

Executive Summary

Over 30 years ago in *Bearden v. Georgia*, the United States Supreme Court issued a seminal ruling that to imprison someone because of their poverty and inability to pay a fine or restitution would be fundamentally unfair and violate the Equal Protection Clause of the Fourteenth Amendment. Yet today, courts across the United States and Nebraska routinely imprison people because of their inability to pay. This practice has been termed a “modern-day debtors’ prison.” This practice happens at various points in the criminal justice system. First, it can happen to people who are awaiting trial. Individuals are forced to sit in jail while their case proceeds because a bail amount has been set beyond their ability to pay while those with financial resources regain their freedom to go to work, school and be with their families while awaiting trial. Second, some people who have been adjudicated and found guilty end up in jail even though they were not sentenced to jail time because they are unable to pay a fine and are imprisoned instead to “sit it out.”

The end result of these systems: a maze with dead-ends at every turn for low-income people.

In this report, the ACLU of Nebraska presents the results of its investigation into Nebraska’s modern-day “debtors’ prisons” and bail practices. The report shows how, day after day, low-income Nebraskans are imprisoned because they lack the ability to pay

bail or pay fines and fees. These practices are illegal, create hardships for those who already struggle, and are not a wise use of public resources. Debtors’ prisons result in an often fruitless effort to extract payments from people who may be experiencing homelessness, are unemployed, or lack the ability to pay.

The ACLU of Nebraska investigated the imposition of bail as well as the imposition of court fees and fines. Our survey focused on the four largest counties (Douglas, Lancaster, Sarpy and Hall), using open records requests, court record review, interviews with people involved in the system with additional in-court observations in Douglas, Lancaster and Sarpy Counties.

Key Findings

Nebraska doesn’t have as many problematic practices as found in other jurisdictions. Some states have notorious abusive practices such as private bondsmen who use dangerous tactics to apprehend low-level offenders, staggeringly high interest rates and late fees that make it nearly impossible to ever pay off court costs, and additional fees for serving jail time or applying for a public defender. Therefore we believe Nebraska is well positioned to reform our system to remedy the harms currently being inflicted on people who are poor.

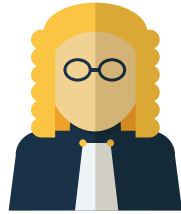
For the full report, visit aclunebraska.org/unequaljustice

Bail: The Basics

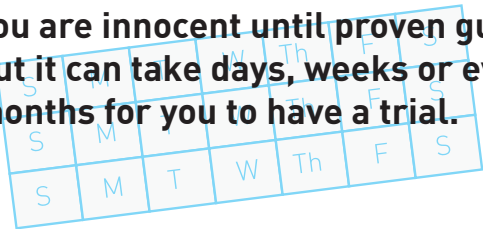


You are charged with a crime and arrested.

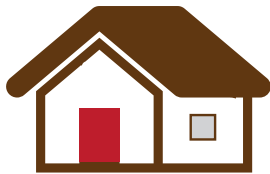
If a judge thinks you are a flight risk or a danger to public safety, a judge will require you to post money bail.



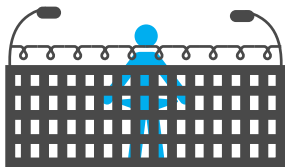
You are innocent until proven guilty, but it can take days, weeks or even months for you to have a trial.



If you pay 10% of the bail, you can bail out and go home until your trial.



But if you cannot afford bail, you sit in jail until the trial.



While waiting for your trial, you cannot go to work, school, see your children or otherwise live your life.



Human Costs

Being held in jail comes with devastating human costs for low-income Nebraskans. **Being held in jail while awaiting trial means one is more likely to be found guilty and more likely to receive a stiffer sentence.** People who are in jail—whether pretrial or whether sitting out a fine—face significant disruption to their lives. **Before they even get to trial, Nebraska defendants charged with nonviolent offenses spend an average of 48 days behind bars.** Being imprisoned has a destabilizing impact on their jobs, their children, and their wellbeing. These burdens fall on people who were already struggling and at risk. It is well documented that racial disparities exist at every stage of our criminal justice system. This research shows a clear and disturbing overrepresentation of people of color behind bars in Nebraska as well.

Waste of Taxpayer Money and Resources

Incarcerating low-income people prior to trial or requiring an indigent defendant to sit out a fine costs much more than counties actually recoup. **Our study revealed that over half of the county jail populations were pretrial people—Nebraskans presumed innocent but unable to afford bail to go home.** At the same time, several counties are facing overcrowded jails and are burdened by paying other counties to take their inmates. Indigent defendants sitting out a fine are doing so at taxpayer expense—it costs between \$80-90 per day per inmate, depending on the county involved. The annual costs to run the jails in our four largest counties will reach over \$73 million in 2017. Both practices strain county budgets and burden taxpayers unnecessarily.

1 in 10 Nebraskans are people of color.



Jailing the Poor Creates a Two-Tiered System of Justice

Bail should be limited to people who pose a true risk to public safety or who present a concrete flight risk. All other defendants should be allowed to go home on their own recognizance. Instead of an individualized assessment of dangerousness and flight risk, Nebraska is reflexively placing a cash bail amount for most defendants. **This means the wealthy go home while the poor remain behind bars, though studies show there is no rational basis to treat the poor more harshly.** Similarly, when a wealthy defendant is sentenced to pay a fine, they can do so and go on their way while a poor defendant without the means to write a check must sit in jail. Nebraska deducts \$90 per day served from court fines, so even a nonviolent misdemeanor offense can result in many days in jail. These practices mean the poorest defendants are punished more harshly than those with money.

Recommendations

The ACLU of Nebraska has made recommendations to judges, police and policymakers to remedy the serious abuses that have resulted in a system of unequal justice. These recommendations are based on proven models in other jurisdictions and seek to ensure that all people—regardless of their economic position—are treated fairly and equally.

More than 5 in 10 Nebraskans in jail pretrial are people of color.



Debtors' Prison: The Basics

You are ticketed for a misdemeanor, such as a traffic offense.



You have to appear in court but because you aren't facing jail time, you are not given an attorney.

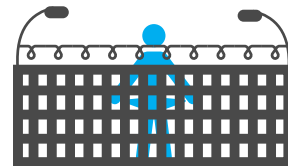


If you are convicted the court sets a fine.

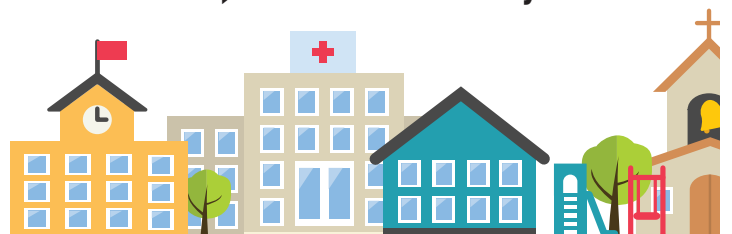
If you can afford to pay the fine, you get to go home.



If you cannot afford the fine, you sit in jail. \$90/day is deducted from your fine each day you are in jail.



While sitting out your fine, you cannot go to work, school, see your children, or otherwise live your life.





Janet Vashon is a 46 year old woman who recently experienced homelessness.

“This is the first time I’ve ever hit rock bottom. It’s been a hard couple of months. I’m living in my car while some social workers are helping me apply for benefits.”

In September, 2016, Janet and a friend decided to stand by the side of the road with signs reading “Homeless, anything will help.”

“I’d seen other people doing it. I was scared and embarrassed but I was out of options and thought I’d try anything.”

Lincoln Police arrested Janet under a city ordinance prohibiting soliciting donations near a roadway.

“When the officer pulled up, I thought he was going to tell me to move on. But he arrested me. He actually put handcuffs on

me and put me in the back of his car to take me to jail. When they booked me, one officer told another ‘She’s transient, no address to list.’ This was the first time that word had ever been applied to me and it just hit me like a ton of bricks. I couldn’t stop crying.”

Janet was told she could leave if she could post \$1,000—at 10%, that means she could go free if she had \$100.

“I didn’t have \$100! That’s why I was standing on the corner in the first place!”

Ultimately, Janet was able to call her mother and have \$100 posted.

“My court date was three weeks after my arrest—they would have kept me in jail that whole time if my mother hadn’t come through for me. Not everybody has resources. How does this even make sense?”

For Janet and many other low-income Nebraskans, our criminal justice system is a maze with no escape. Read more stories and the full ACLU of Nebraska investigation into bail and modern day debtors’ prisons.

aclunebraska.org/unequaljustice