



OHIO COULD SAVE BIG BY IMPLEMENTING BAIL REFORM: **A FISCAL IMPACT ANALYSIS**

Addendum:
Cash Bail's Influence on Sentencing
Disparities and Case Outcomes

MARCH 2021

OHIO-BASED RESEARCH CONFIRMS SAME DISTURBING TRUTH: PRETRIAL DETENTION LEADS TO WORSE CASE OUTCOMES AND LONGER SENTENCES

According to research from across the United States, those who remain in jail pretrial—compared with those who are released or are able to purchase their pretrial release by posting financial conditions of release—are more likely to be convicted,¹ more likely to be sentenced to jail or prison,² and their sentences are longer.³ This is due not only to the increased likelihood of those held behind bars feeling coerced into taking plea deals,⁴ but also because it is harder to build successful cases from behind bars.⁵

Our Fiscal Impact Analysis report only examined the cost-savings and expenses that would be realized due to decreased jail and increased community support costs if Ohio were to implement common sense bail reform. It estimated that those savings would be \$199 to \$264 million each year. This enormous figure did not, however, include a calculation of larger cost-savings that could be realized if our current system no longer, for example, depressed the work force, increased social benefit requests, and burdened child services due to people unnecessarily remaining in jail pretrial. It also did not address the growing body of research that shows pretrial detention is linked with worse case outcomes.

We chose to analyze the same court data used for the initial report to determine whether, and if so, to what extent, pretrial detention is linked with worse case outcomes in Ohio. **Unfortunately, yet unsurprisingly, the below findings demonstrate the same truths were found in Ohio: pretrial detention increases the likelihood of worse case outcomes and longer sentences.** This also confirms yet another area that is ripe for a cost-savings analysis, because it indicates that reforming Ohio's pretrial system would decrease not just pretrial detention, but also jail and prison sentences.

Pretrial detention increases the likelihood of worse case outcomes and longer sentences.

INCREASED LIKELIHOOD OF CONVICTION

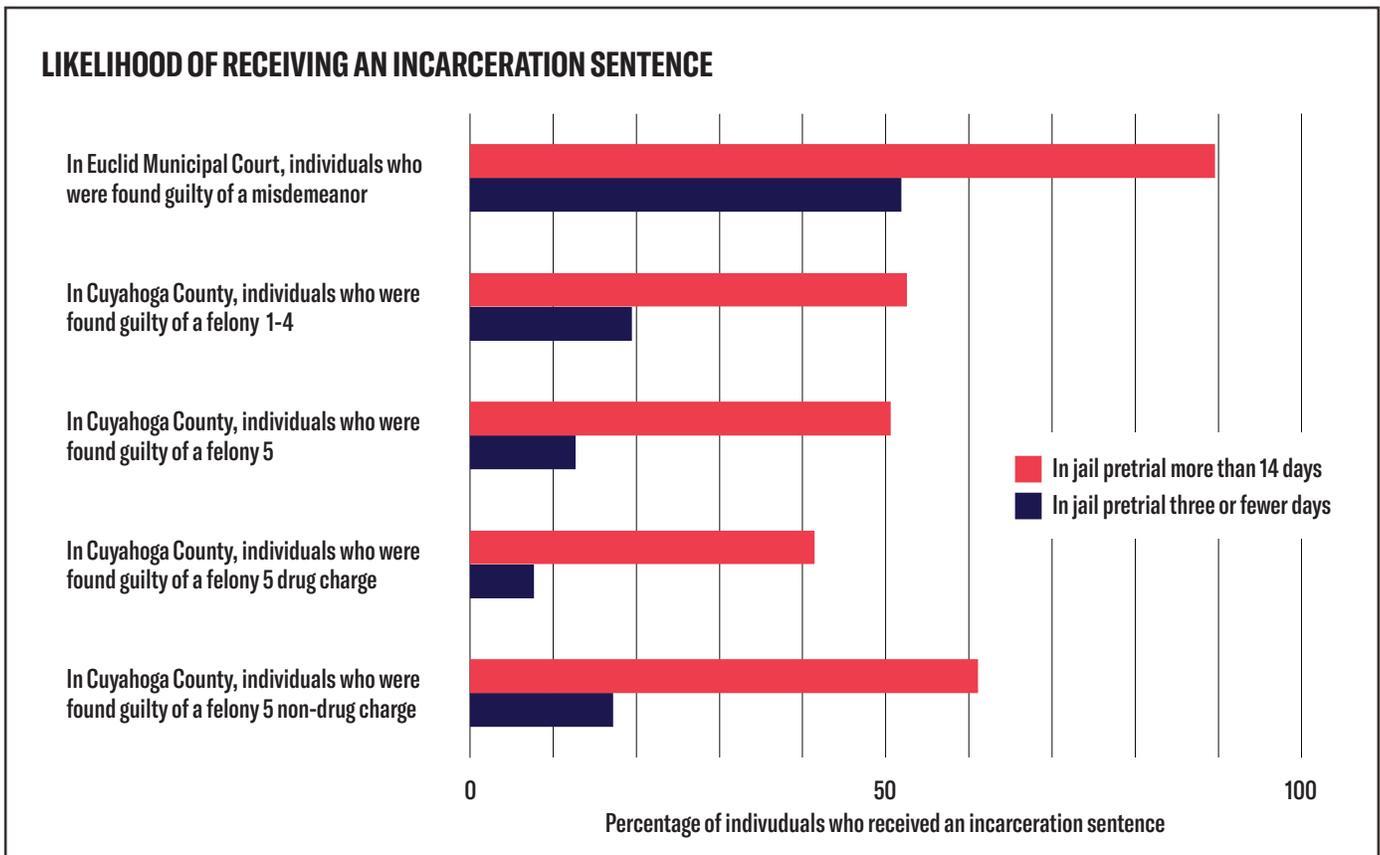
We compared case outcomes (defined as conviction or no conviction) for those who remained in jail pretrial for three or fewer days with those who remained in jail pretrial for 14 or more days. Our data for this analysis came from Euclid, Cleveland, and Franklin municipal courts and the Cuyahoga County Court of Common Pleas. We examined the connection across crime levels, and also analyzed data from within crime types (i.e. by looking at whether this relationship exists when comparing the different pretrial detention lengths of stay for individuals charged with the same crime or crime type). **In each jurisdiction examined, those who remained in jail three or fewer days were less likely to be convicted.**

- This was true for both misdemeanors and felonies.
- This was true when examining specific crimes such as Felony 5 drug offenses.
- The increased likelihood ranged from a low of 12% for Felony 1-4 in the Cuyahoga County Court of Common Pleas to 40% in the Franklin County Municipal Court for misdemeanors when comparing those held for three or fewer days with those held for 14 or more days.

INCREASED LIKELIHOOD OF A SENTENCE OF INCARCERATION

For those who were found guilty we were able to examine sentencing data from Euclid Municipal Court and Cuyahoga County Court of Common Pleas. **In both jurisdictions, individuals who were in custody pretrial for three or fewer days were less likely to receive a jail or prison sentence.**

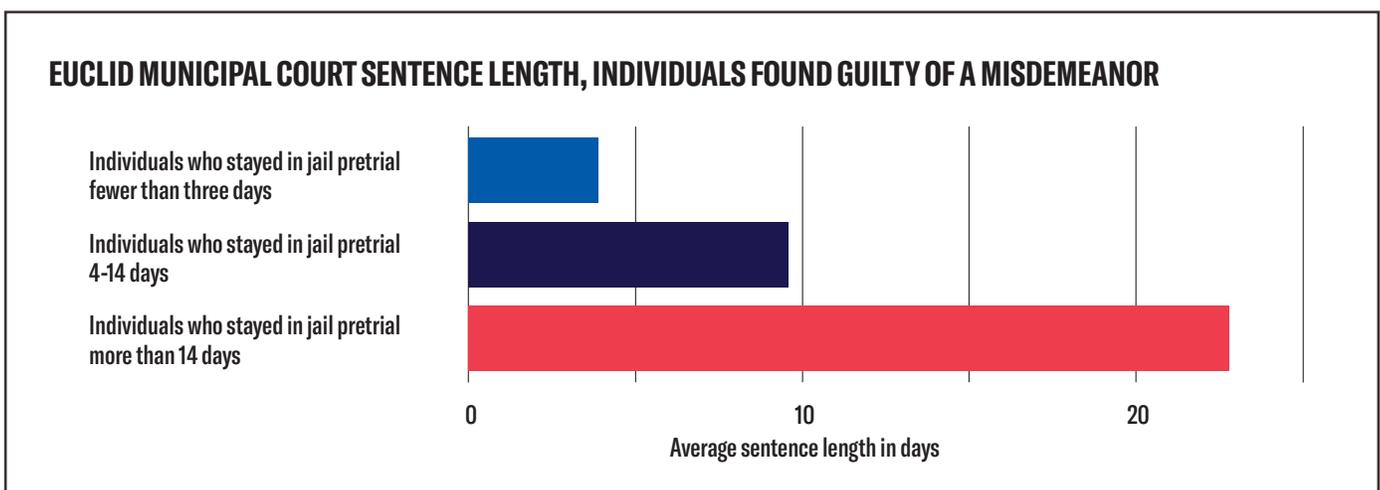
- In Euclid, individuals who were found guilty of a misdemeanor and were in jail pretrial for 14 days or more were 73% (89.6% vs 51.9%) more likely to receive an incarceration sentence than individuals who were jailed three or fewer days during the pretrial period.
- In Cuyahoga County, individuals who were found guilty of a felony 1-4 and were in jail pretrial for 14 days or more were 169% (52.6% vs 19.5%) more likely to receive a jail sentence than individuals who were jailed three or fewer days during the pretrial period.
- In Cuyahoga County, individuals who were found guilty of a felony 5 and were in jail pretrial for 14 or more days were nearly four times (50.6% vs 12.7%) more likely to receive a jail sentence than individuals who were jailed three or fewer days during the pretrial period.
 - Individuals found guilty of a felony 5 drug charge were over five times (41.46% vs 7.69%) more likely to receive a jail sentence than individuals who were jailed for three or fewer days during the pretrial period.
 - Individuals found guilty of a felony 5 non-drug charge were three and a half times (61.11% vs 17.24%) more likely to receive a jail sentence than individuals who were jailed for three or fewer days during the pretrial period.



LONGER JAIL AND PRISON SENTENCES

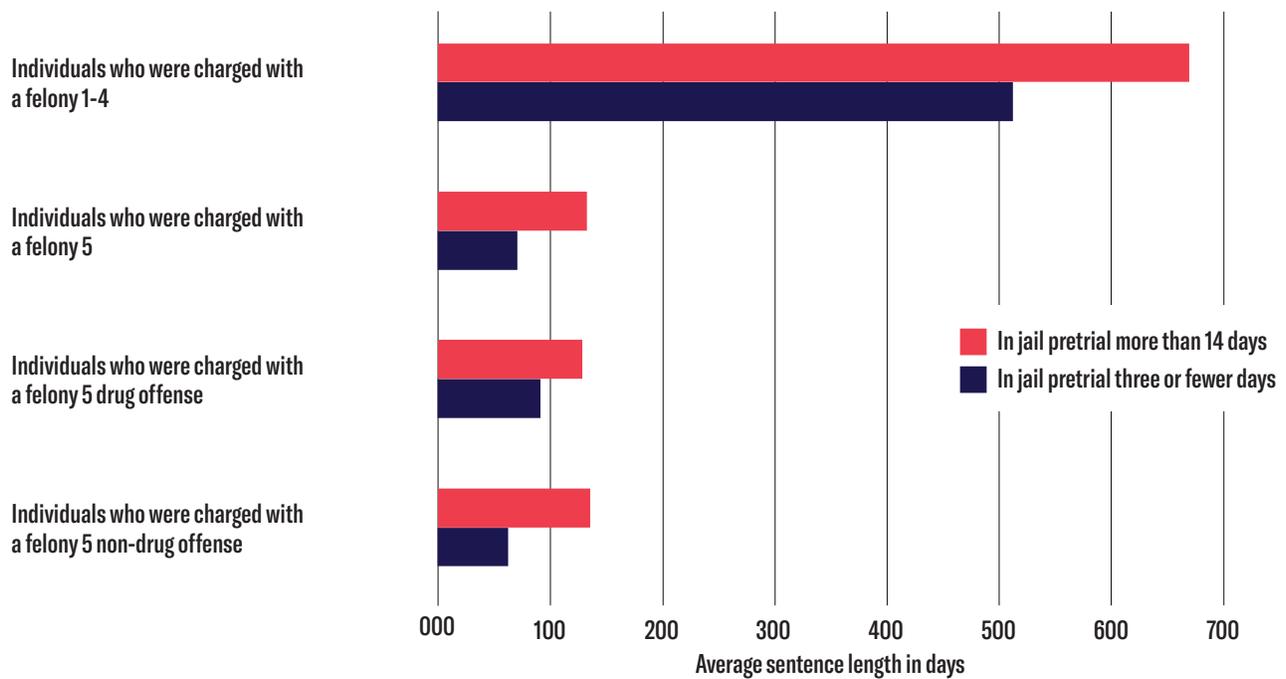
For those who received an incarceration sentence in Euclid Municipal Court or Cuyahoga County Court of Common Pleas, we were able to compare the length of sentences based on the amount of time individuals were held in jail pretrial. **Overall, those who remained in jail 14 days or longer during the pretrial period received longer jail or prison sentences.**

- **Misdemeanors:** We examined individuals in Euclid Municipal Court who were found guilty of a misdemeanor and sentenced to jail and compared their sentence length based on how long they stayed in jail during the pretrial period. Individuals who spent more than 14 days in jail pretrial received jail sentences that were nearly six times longer (22.8 days vs 3.9 days) than those who stayed fewer than three days in jail pretrial and more than twice as long (22.8 days vs 9.6 days) as those who stayed 4-14 days in jail pretrial.



- **Felonies:** We examined individuals in Cuyahoga County Court of Common Pleas who were found guilty of a felony and sentenced to jail or prison and compared their sentence length based on how long they stayed in jail during the pretrial period.
 - **Felony 1-4:** Individuals who were charged with a felony 1-4 and spent more than 14 days in jail pretrial received incarceration sentences that were 31% longer (670 days vs 513 days) than those who stayed fewer than three days in jail pretrial.
 - **Felony 5:** Individuals who were charged with a felony 5 and spent more than 14 days in jail pretrial received incarceration sentences that were 86% longer (133 days vs 71 days) than those who stayed fewer than three days in jail pretrial.
 - **Felony 5 drug offense:** Individuals who were charged with a felony 5 drug offense and spent more than 14 days in jail pretrial received incarceration sentences that were 40% longer (129 days vs 92 days) than those who stayed fewer than three days in jail pretrial.
 - **Felony 5 non-drug offense:** Individuals who were charged with a felony 5 non-drug offense and spent more than 14 days in jail pretrial received incarceration sentences that were over two times longer (136 days vs 63 days) than those who stayed fewer than three days in jail pretrial.

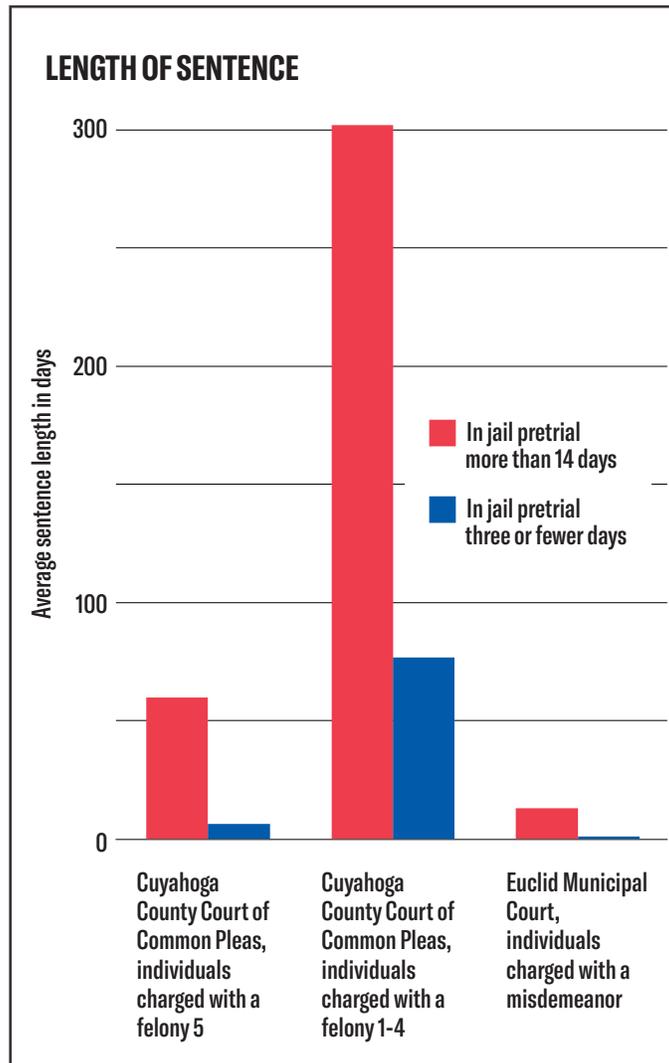
CUYAHOGA COUNTY COURT OF COMMON PLEAS SENTENCE LENGTH, INDIVIDUALS FOUND GUILTY OF A FELONY



OVERALL WORSE OUTCOMES

The preceding two analyses only compared outcomes within limited preset categories (i.e. the data on “increased likelihood of a sentence of incarceration” only looked at those who had already been convicted and the data on “longer jail and prison sentences” only looked at those who received a sentence of incarceration). The below findings show how long the average person is sentenced to, including those whose cases were dismissed (who therefore received zero jail or prison sentence), those who were convicted but did not receive a jail or prison sentence, and those who were convicted and did receive a jail or prison sentence.

- In Euclid Municipal Court, on average, those charged with a misdemeanor and held pretrial for more than 14 days received a jail sentence that was 13 times longer (13 days vs 1 day) than those held for three days or less.
- In Cuyahoga County Court of Common Pleas, on average, those charged with a Felony 1-4 and held pretrial for more than 14 days received a jail or prison sentence that was nearly four times longer (302 days vs 77 days) than those held for three days or less.
- In Cuyahoga County Court of Common Pleas, on average, those charged with a Felony 5 and held pretrial for more than 14 days received a jail or prison sentence that was more than nine times longer (59.8 days vs 6.5 days) than those held for three days or less.



TAKEAWAYS

Individuals who are held pretrial have worse outcomes, and the disparity grows with the number of days individuals are held pretrial. This has been identified and researched across the country, and has now been empirically demonstrated in Ohio, even when controlled for crime level and crime type. **Because the use of cash bail is still prevalent in Ohio, and the use of preventative detention⁶ is very limited, most individuals who remain in jail pretrial are held because they are unable to post a financial condition of release.** Unfortunately, this research supports Bryan Stevenson’s observation that “we have a system of justice that treats you better if you’re rich and guilty than if you’re poor and innocent.” This makes a mockery of our criminal legal system because “wealth—not culpability—shapes outcomes.” It is also clear that the projected \$199 to \$264 million of annual savings that Ohio could realize by adopting common sense bail reform policies is substantially lower than the actual savings, because it did not take into consideration savings based on decreased jail and prison sentences.

Methodology

We used the same data that was used for the fiscal impact analysis report. This included two years' worth of data for Euclid and Cleveland municipal courts and Cuyahoga County, and roughly six months of data for Franklin County. The tables in this analysis included felony data for Cuyahoga County and only misdemeanor data for the remaining jurisdictions. Only Euclid contained sentencing data as part of the original pretrial data set. For Cleveland and Franklin County we only used disposition data from the original data sets to determine the likelihood of being found guilty based on the time held in jail pretrial. For Cuyahoga County we randomly selected records to look up the sentencing details. This analysis was broken out into three categories: felony 1-4, felony 5 non-drug, and felony 5 drug. For the felony 1-4 category we randomly selected 300 individuals who were found guilty. These records were broken down in 12 subcategories. The subcategories include three pretrial jail categories of three days or fewer, 4-14 days, and more than 14 days. Each pretrial jail category was further broken down by each of the four felony categories. This allowed us to look at the sentencing impacts by crime severity. Most of these records were found in the court system, but in some instances there were multiple cases making it impossible to determine the correct sentence. Those records were dropped from the analysis (under 10%). There were also a small number of records that were reclassified from the pretrial length of stay category based on the time served credit found in the sentencing data. The data analysis for this report was completed by expert economist Mike Wilson, and this report was written by Claire Chevrier, Policy Counsel at the ACLU of Ohio.

Endnotes

- 1 Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108(2), 201-40; Leslie, E., & Pope, N. G. (2017). The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments. *The Journal of Law and Economics*, 60(3), 529-557; Gupta, A., Hansman, C., & Frenchman, E. (2016). The heavy costs of high bail: Evidence from judge randomization. *The Journal of Legal Studies*, 45(2), 471-505; Phillips, M.T. (2012). A Decade of Bail Research in New York City, New York City Criminal Justice Agency Inc. Retrieved from <https://www.prisonpolicy.org/scans/DecadeBailResearch12.pdf>
- 2 Heaton, P., Mayson, S., & Stevenson, M. (2017). The downstream consequences of misdemeanor pretrial detention. *Stan. L. Rev.*, 69, 711; Phillips, M.T. (2012). A Decade of Bail Research in New York City, New York City Criminal Justice Agency Inc. Retrieved from <https://www.prisonpolicy.org/scans/DecadeBailResearch12.pdf>; Lowenkamp, C., VanNostrand, M., & Holsinger, A. (2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes, Arnold Foundation. Retrieved from http://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_state-sentencing_FNL.pdf.
- 3 Heaton, P., Mayson, S., & Stevenson, M. (2017). The downstream consequences of misdemeanor pretrial detention. *Stan. L. Rev.*, 69, 711; Lowenkamp, C., VanNostrand, M., & Holsinger, A. (2013). Investigating the Impact of Pretrial Detention on Sentencing Outcomes, Arnold Foundation. Retrieved from http://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_state-sentencing_FNL.pdf.
- 4 Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108(2), 201-40; Heaton, P., Mayson, S., & Stevenson, M. (2017). The downstream consequences of misdemeanor pretrial detention. *Stan. L. Rev.*, 69, 711.
- 5 Chevrier, C. (forthcoming). Why individuals who are held pretrial have worse case outcomes: how our reliance on cash bail degrades our criminal legal system. In C. Scott-Hayward, J. Copp, & S. Demuth (Eds.) *DCS Handbook – Volume 6: Pretrial Justice*. Routledge.
- 6 As defined by Oh. Rev. Code § 2937.222.

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1108 CITY PARK AVENUE • SUITE 203 • COLUMBUS, OH 43206
4506 CHESTER AVENUE • CLEVELAND, OH 44103

