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Bailing Out Louisiana: A Proposal to Reform Louisiana's Money-Based Bail Bond System

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Bailing Out Louisiana: A Proposal to Reform Louisiana’s Money-Based Bail Bond System

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INTRODUCTION

“Arrested, put in the lineup, trying to put dents in my armor. But, I’m a survivor, plus I’m liver than most. Out on bail, fifty thou’, still riding with toast.”¹

Copyright 2018, by MILTON J. HERNANDEZ, IV.

1. JAY-Z, GUILTY UNTIL PROVEN INNOCENT (Roc-A-Fella Records 2001). Jay-Z is a vocal advocate for bail bond reform and produced a series on the story of Kalief Browder, a young man who committed suicide after spending three years on Rikers Island awaiting trial. See Shawn Carter, *Jay Z: For Father’s Day, I’m*

On June 20, 2017, Brian Gisclair stood before Judge Harry Cantrell in the Orleans Parish Criminal District Court in New Orleans, Louisiana.² The day before, New Orleans police officers stopped a vehicle in which Gisclair was a passenger.³ The officers claimed they saw a drug deal take place in the car.⁴ The police explained that after the transaction, Gisclair exited the car and discarded a small plastic bag filled with a “white rocklike substance.”⁵ The officers arrested Gisclair for felony possession of cocaine.⁶

Gisclair was one of 20 recently arrested defendants in Judge Cantrell’s courtroom that day.⁷ Each defendant was making their initial appearance before the court.⁸ This initial appearance allowed each defendant to meet with an attorney, hear the charges made against his, and receive a bail amount.⁹

Gisclair, like over 85% of criminal defendants in New Orleans, needed a public defender to represent him.¹⁰ Gisclair’s court-appointed attorney explained to Judge Cantrell that a cash bail was unnecessary because Gisclair had no prior violent crime convictions, was not a danger to the community, and would certainly return to court on his trial date.¹¹ Further, his attorney mentioned that Gisclair had a job interview scheduled that day with an apartment complex.¹² With a job application pending, the attorney argued, Gisclair was less likely to flee from the jurisdiction of the court if the judge released him on his own recognizance pretrial.¹³ Judge Cantrell,

Taking on the Exploitative Bail Industry, TIME (June 16, 2017), <http://time.com/4821547/jay-z-racism-bail-bonds/> [https://perma.cc/M6LC-7637].

2. Bryce Covert, *America Is Waking Up to the Injustice of Cash Bail*, NATION (Oct. 19, 2017), <https://www.thenation.com/article/america-is-waking-up-to-the-injustice-of-cash-bail/> [https://perma.cc/9UUU-CV3T].

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* Gisclair was looking for a new job after being laid off four months earlier. *Id.* He was a resident of Westwego, Louisiana, where he had lived his whole life. Class Action Complaint at 5, *Caliste v. Cantrell*, No. 2:17-CV-06197, 2018 WL 1365809 (E.D. La. Mar. 16, 2018).

however, quickly issued a \$2,500 bail for Gisclair—the minimum Judge Cantrell ever orders under his discretion.¹⁴

Gisclair could not afford to pay the bail or to contract with a bail bondsman.¹⁵ He did not know anyone who could loan him the money.¹⁶ The judge, therefore, remanded him to the Orleans Parish Prison jail.¹⁷ For weeks, Gisclair did not receive any information about his case, and he could not afford to call his fiancée and children.¹⁸ Gisclair remained in jail for 40 days and appeared in court on three more occasions before the jail released him.¹⁹

Upon leaving jail, Gisclair called the apartment complex employer with whom he had scheduled the interview.²⁰ After waiting a week to hear from Gisclair, the employer hired someone else for the maintenance position.²¹ Gisclair had to find temporary work and start over his attempt to build a more stable life for himself and his family.²²

Gisclair's story is just one of many examples of how the for-profit cash bail system causes tremendous hardships for impoverished defendants.²³ Countless others fall into similar difficulties when courts give them a bail amount that they cannot afford and they are remanded to jail.²⁴

The United States has one of the highest incarceration rates in the world and has the highest per capita prison population among the world's

14. Covert, *supra* note 2.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *See id.* Later, Gisclair and co-plaintiff Adrian Caliste filed a class action complaint against Judge Harry Cantrell, “seeking a declaratory judgment that Judge Cantrell’s bond policy, which they assert results in the creation of a ‘modern debtor’s prison,’ and financial conflict of interest are violations of [their] constitutional rights.” Caliste v. Cantrell, No. 17-6197, 2018 WL 3727768, at *1 (E.D. La. Aug. 6, 2018). The court granted the plaintiffs’ summary judgment. *Id.*

24. *See, e.g., NewsClips Database*, PRETRIAL JUST. INST., <https://university.pretrial.org/libraryup/newsclips> [<https://perma.cc/3WMA-WLSC>]. The Pretrial Justice Institute provides a searchable spreadsheet of cases and stories related to cash bail systems’ detrimental effects on impoverished defendants. *Id.*; Avianne Tan, *Kalief Browder: The Life and Death of the Man Who Spent 3 Years Without Trial on Rikers Island*, ABC NEWS (June 9, 2015), <http://abcnews.go.com/US/kalief-browder-life-death-man-spent-years-trial/story?id=31643296> [<https://perma.cc/9TG9-KUE4>].

major economies.²⁵ Approximately 450,000 of the United States's county and city jail detainees—about 70% of the total county and city jail populations—are still awaiting trial.²⁶ The number of defendants detained pretrial in the United States is larger than most other countries' entire imprisoned population.²⁷ Defendants are frequently detained pretrial for weeks, months, or even years because they cannot afford to pay the set bail.²⁸ Louisiana is no exception.²⁹

Louisiana has the second highest per capita incarceration rate in the country.³⁰ In 2015, approximately 1 of every 100 Louisianans were in

25. Michelle Ye Hee Lee, *Yes, U.S. locks people up at a higher rate than any other country*, WASH. POST (July 7, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/?utm_term=.bfc795ddcb91 [<https://perma.cc/V7DC-42Y4>].

26. *Selling Off Our Freedom*, COLOR OF CHANGE & ACLU'S CAMPAIGN FOR SMART JUSTICE 6 (2017), https://d11gn0ip9m46ig.cloudfront.net/images/059_Bail_Report.pdf [<https://perma.cc/82XG-VCQ3>].

27. *Compare id.*, with *Highest to Lowest*, WORLD PRISON BRIEF, http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All [<https://perma.cc/8SXR-TJJ7>] (last visited Oct. 18, 2018). Note the distinction between total prison population, which encompasses all people detained, and total pretrial detention population, which is the number of people being detained *before* trial. *See also* Covert, *supra* note 2.

28. *Selling Off Our Freedom*, *supra* note 26.

29. *See, e.g.*, LA. JUSTICE REINVESTMENT TASK FORCE, LA. JUSTICE REINVESTMENT TASK FORCE REPORT & RECOMMENDATIONS (2017). The Louisiana criminal justice system creates chilling stories of pretrial detention. *See generally* *NewsClips Database*, *supra* note 24 (searchable spreadsheet of cash-bail stories, including stories from Louisiana); *see also* Eve Abrams, *If you pass through New Orleans courts, innocent or not, you still have to pay – 4*, NEW ORLEANS PUB. RADIO (Feb. 17, 2016), <http://wno.org/post/if-you-pass-through-new-orleans-courts-innocent-or-not-you-still-have-pay-4> [<https://perma.cc/7NW5-773Z>] (reporting on Reuben who, after contracting with a bail bondsman to pay his \$5,500 bail, saw a judge increase his bail by another \$5,000, forcing Reuben and his family to pay more to the bondsman; the court dropped Reuben's case after he paid the premium on the second bail); *see* Katy Reckdahl, *Lawsuit accuses New Orleans bail bond company of overcharging*, NEW ORLEANS ADVOCATE (June 19, 2017), http://www.theadvocate.com/new_orleans/news/courts/article_6398b902-5528-11e7-8707-afdbcd77a50.html [<https://perma.cc/SB36-7XES>] (giving a description of the law suit against Blair's Bail Bonds, who charged Ronald Egana and his family more than \$6,000—over double the normal premium amount for a bail of Ronald's size).

30. *See* John Simerman, *'Prison capital' no more: Louisiana sheds long-held title, but remains above U.S. incarceration rate*, ADVOCATE (June 20, 2018), https://www.theadvocate.com/baton_rouge/news/article_65844992-6b53-11e8-

parish and city jails—nearly triple the national average.³¹ That same year, about half of Louisiana’s jail inmates were being detained pretrial.³² Furthermore, nearly all of Louisiana’s pretrial inmates remain in jail because they have not satisfied their bail payment.³³ Spending unnecessary time in jail threatens the income, job security, and home life of many criminal defendants.³⁴ Requiring defendants to pay bail, especially exorbitant amounts, perpetuates problems of poverty, recidivism, unwarranted guilty pleas, and high incarceration rates.³⁵

Several state, county, and municipal jurisdictions in the United States have abandoned cash bail systems, which require defendants to pay bail or risk detention in jail until their trial date.³⁶ These jurisdictions are instead

ac2d-97c9311b1424.html [https://perma.cc/39ZX-QQCY]. At the inception of this Comment, Louisiana had the highest per capita incarceration rate in the country. LA. JUSTICE REINVESTMENT TASK FORCE, *supra* note 29, at 12.

31. *Incarceration Trends: Louisiana*, VERA INST. JUST., <http://trends.vera.org/rates/louisiana?incarcerationData=all> [https://perma.cc/SSL7-646K] (last visited Aug. 2, 2018). This number is different from and does not include the number of people detained in Louisiana state prison facilities. *Id.* Generally speaking, jails are “[parish or county] operated short-term facilities” that detain defendants “awaiting trial or sentencing” or have been convicted of misdemeanors, and prisons are “longer-term facilities run by the state or the federal government” *What is the difference between jails and prisons*, BUREAU JUST. STAT., <https://www.bjs.gov/index.cfm?ty=qa&iid=322> [https://perma.cc/YXY5-9LJ7] (last visited Aug. 2, 2018).

32. *Incarceration Trends: Louisiana*, *supra* note 31. In 2015, of the 28,696 Louisianans that jails detained in these local facilities, they were holding 14,038 of them pretrial. *Id.*

33. See, e.g., Mathilde Laisne, Jon Wool & Christian Henrichson, *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, VERA INST. OF JUST. (2017).

34. See, e.g., Laisne, Wool & Henrichson, *supra* note 33; *The Socioeconomic Impact of Pretrial Detention*, OPEN SOC’Y JUST. INITIATIVE (2010), <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/a2j-%20Socioeconomic%20impact%20of%20PTD%20OSI%20UNDP.pdf> [https://perma.cc/XCU9-8NKH]; Will Dobbie, Jacob Goldin & Crystal Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges* (July 2016), http://scholar.harvard.edu/files/cyang/files/dgy_bail_july2016.pdf [https://perma.cc/4V5D-WMMT].

35. See Laisne, Wool & Henrichson, *supra* note 33.

36. See generally *infra* Part II; Josie Duffy Rice, *New Jersey passes new bail reform law, changing lives of poor defendants*, DAILY KOS (Jan. 3, 2017), <https://www.dailykos.com/stories/2017/1/3/1616714/-New-Jersey-passes-new-bail-reform-law-changing-lives-of-poor-defendants> [https://perma.cc/WLJ8-7JWD]; Ann E. Marimow, *When it comes to pretrial release, few other jurisdictions do it D.C.’s way*, WASH. POST (July 4, 2016), <https://www.washing>

adopting risk assessment tools that analyze each defendant's criminal history, connections with the community, flight risk, and danger to society using mathematical algorithms.³⁷ If a defendant is deemed high-risk based on these considerations, he is detained before his trial.³⁸ If a defendant is considered low-risk, he is released on his own recognizance,³⁹ and expected to return to court on his hearing date.⁴⁰ Risk assessment tools are less expensive, more efficient, and fairer than cash bail systems for defendants, courts, and court agencies.⁴¹

Louisiana should eliminate its cash bail system and adopt a statewide risk assessment-based system—the Arnold Foundation's Public Safety Assessment tool—so courts can calculate which defendants must be detained and which defendants can be safely released until trial.⁴² Adopting such a system not only promotes equality by ensuring that courts do not target indigent defendants indiscriminately, but it also promotes public safety by ensuring that jails only release low-risk defendants pretrial.⁴³

Part I of this Comment provides background on the bail system in general and specifically in Louisiana. Part II discusses recent developments in bail reform in other jurisdictions around the country, particularly those adopting risk assessment-based systems. Part III argues that Louisiana should follow in the footsteps of the jurisdictions eliminating cash bail systems and adopt a similar risk assessment tool. Part III also analyzes jail data in Louisiana and argues that there are economic incentives for Louisiana's parishes and cities to adopt this new system. This Comment concludes by imploring the Louisiana Legislature to eliminate the antiquated, inefficient cash bail system and adopt a risk assessment tool statewide like the Arnold Foundation's Public Safety Assessment tool.

tonpost.com/local/public-safety/when-it-comes-to-pretrial-release-few-other-jurisdictions-do-it-dcs-way/2016/07/04/8eb52134-e7d3-11e5-b0fd-073d5930a7b7_story.html?utm_term=.2a5b8a415f53 [https://perma.cc/SFE5-THM9]; *PSA Research*, LAURA & JOHN ARNOLD FOUND., <http://www.arnoldfoundation.org/initiative/criminal-justice/pretrial-justice/psa-research/> [https://perma.cc/VK9R-BVCC] (last visited Aug. 2, 2018).

37. See generally *supra* note 36.

38. See *PSA Research*, *supra* note 36.

39. "Release on recognizance" is defined as "[t]he pretrial release of an arrested person who promises . . . without supplying a surety or posting bond, to appear for trial at a later date." *Release on Recognizance*, BLACK'S LAW DICTIONARY (10th ed. 2014).

40. See *PSA Research*, *supra* note 36.

41. See *id.*

42. See *id.*

43. See discussion *infra* Part III.

I. LOUISIANA'S ARCHAIC CASH BAIL SYSTEM

Cash bail systems, in which defendants must pay a specific amount of money or face pretrial detainment, are rooted in the foundation of Western civilizations.⁴⁴ Anglo-Saxon England, the United States's common law predecessor, used bail systems because of a general lack of prisons.⁴⁵ Without enough prison space, courts needed to be sure that defendants would return to court when required.⁴⁶ Jails could release a man accused of a crime before trial so long as a surety "would guarantee both the appearance of the accused at trial and payment of [monetary fines] upon conviction."⁴⁷ The court would presume the accused guilty if he fled before trial, and the surety would be bound to pay the fines attached to the accused's conviction.⁴⁸ When Parliament passed acts limiting the power of bail, it guaranteed several rights for citizens.⁴⁹

The founders of the United States brought with them the rights associated with bail.⁵⁰ In modern times, states are free to establish their own bail systems, but may be subject to the limitations imposed by the Eighth Amendment of the Constitution, which provides that "[e]xcessive bail shall not be required."⁵¹ Indeed, parties have challenged Louisiana's bail statutes before and courts have found such claims unmerited—holding that the statutes do not violate parties' due process rights.⁵²

44. Gabriel Loupe, Comment, *The Lack of Money is the Root of All Evil: Louisiana's Ban on Bail Without Surety*, 77 LA. L. REV. 109, 111 (2016). "The practice of bail has a history extending back millennia to the early Roman Republic." *Id.*

45. *Id.*

46. *Id.*

47. June Carbone, *Seeing Through the Emperor's New Clothes: Rediscovery of Basic Principles in the Administration of Bail*, 34 SYRACUSE L. REV. 517, 519–20 (1983) (internal emphasis omitted).

48. *Id.*

49. Loupe, *supra* note 44, at 112. These included "(1) the Petition of Right, which forbade courts to detain subjects without charging them; (2) the Habeas Corpus Act of 1679, which created procedural safeguards to prevent lengthy pretrial delays; and (3) the English Bill of Rights of 1689, which stated that excessive bail ought not be required." *Id.* (internal quotation marks omitted).

50. *Id.*

51. U.S. CONST. amend. VIII.

52. See *Broussard v. Parish of Orleans*, 318 F.3d 644, 663 (5th Cir. 2003); *Faulkner v. Gusman*, No. 13-6813, 2014 WL 1876213 (E.D. La. May 9, 2014); but see *Cain v. City of New Orleans*, 281 F. Supp. 3d 624, 657 (E.D. La. 2017) (holding that a judge's "institutional interest in maximizing fines and fees [was] substantial" and violated Plaintiff's due process rights).

A. Authoritative Discretion to Obligate Defendants

The Louisiana Code of Criminal Procedure governs the bail system in Louisiana.⁵³ Louisiana law defines “bail” as “the security given by a person to assure a defendant’s appearance before the proper court whenever required.”⁵⁴ Barring particular exceptions,⁵⁵ any person “in custody who is charged with the commission of an offense” has the right to bail.⁵⁶ At a pretrial bail hearing, a judge determines a particular defendant’s bail.⁵⁷ The judge’s goal is to set bail at a value that guarantees the defendant will return to court for their trial and contemplates the safety of the community if the defendant is released pretrial.⁵⁸

To determine a proper bail amount, judges consider ten factors from Louisiana Code of Criminal Procedure article 316.⁵⁹ Article 313 lists additional factors that judges must consider when determining bail for certain offenses.⁶⁰ Despite the consideration of these factors, however,

53. See LA. CODE CRIM. PROC. tit. VIII.

54. *Id.* art. 311(1) (2018).

55. See *id.* arts. 313(D), 321(C).

56. *Id.* art. 312(A).

57. *Id.* art. 313.

58. *Id.* art. 316.

59. *Id.* The ten factors are:

- (1) The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence or involves a controlled dangerous substance.
- (2) The weight of the evidence against the defendant.
- (3) The previous criminal record of the defendant.
- (4) The ability of the defendant to give bail.
- (5) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.
- (6) The defendant’s voluntary participation in a pretrial drug testing program.
- (7) The absence or presence in the defendant of any controlled dangerous substance.
- (8) Whether the defendant is currently out on a bail undertaking on a previous felony arrest for which he is awaiting institution of prosecution, arraignment, trial, or sentencing.
- (9) Any other circumstances affecting the probability of defendant’s appearance.
- (10) The type or form of bail.

Id.

60. *Id.* art. 313(A)(3):

judges are not required to set a bail for every defendant.⁶¹ A judge has discretion to deny a defendant bail if there is “clear and convincing evidence” that the defendant would flee from the court’s jurisdiction or that the defendant’s release would put the community in danger.⁶²

If the judge grants bail instead of releasing the defendant on their own recognizance or denying bail, the defendant is required to pay the amount to the court in full.⁶³ The court then holds the payment in “escrow” and returns it to the defendant if he is not convicted and appears for all required court dates and hearings.⁶⁴ If the court eventually convicts the defendant, the defendant can use the bail payment to pay the fines, fees, and court costs imposed at sentencing, and the court can return any remaining money after these additional obligations are met.⁶⁵ Financial problems may arise for defendants who cannot pay the full amount when the bail is assigned.⁶⁶

(3) In addition to the factors listed in Article 316, in determining whether the defendant should be admitted to bail pending trial, or in determining the conditions of bail, the judge or magistrate shall consider the following:

(a) The criminal history of the defendant.

(b) The potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children.

(c) Documented history or records of any of the following: substance abuse by the defendant; threats of suicide by the defendant; the defendant’s use of force or threats of use of force against any victim; strangulation, forced sex, or controlling the activities of any victim by the defendant; or threats to kill. Documented history or records may include but are not limited to sworn affidavits, police reports, and medical records.

61. *See id.* art. 313(A)(4).

62. *Id.* The statute provides that:

Following the contradictory hearing and based upon the judge’s or magistrate’s review of the factors set forth in Subparagraph(A)(3) of this Article, the judge or magistrate may order that the defendant not be admitted to bail, upon proof by clear and convincing evidence either that the defendant might flee, or that the defendant poses an imminent danger to any other person or the community.

Id.

63. Laisne, Wool & Henrichson, *supra* note 33, at 5.

64. *Id.*

65. *Id.*

66. *Bail, Fines, and Fees*, VERA INST. JUST., <https://www.vera.org/research/bail-fines-and-fees> [<https://perma.cc/QF7U-HCH9>] (last visited Aug. 2, 2018).

To avoid pretrial detention, defendants who are unable to pay have a secondary option: a bail bondsman.⁶⁷

B. Another Smothering Method of Payment Through Bail Bond Offices

Bail bondsmen are commercial, for-profit, state-licensed agents who offer bail bonds.⁶⁸ If a defendant or his family contracts with a bail bondsman, the bondsman acts as a surety for the defendant, paying the court the required bail.⁶⁹ The Louisiana Department of Insurance oversees the certification of bail bondsmen in the state and requires potential bondsmen to meet certain requirements, enroll in courses, take examinations, and complete an apprenticeship program.⁷⁰

Before paying the defendant's bail, the bondsman requires that the defendant pay a nominal fee up front, usually called a "premium."⁷¹ The premium is typically a particular percentage of the set bail.⁷² In New Orleans, for example, bondsmen require 10% of a defendant's bail as a premium.⁷³ A bail bondsman may also have the authority to collect additional fees from the defendant for the prosecutor, the sheriff, the public defender, and the court.⁷⁴ The premium and fees associated with contracting a bail bondsman are non-refundable.⁷⁵ Even if a defendant makes every court appearance and is never prosecuted or convicted, the bail bond company never returns the premium or fee payments.⁷⁶ If a defendant misses a court appearance or violates another condition of bail,

67. *Id.*

68. Laisne, Wool & Henrichson, *supra* note 33, at 6.

69. *Id.*

70. See LA. REV. STAT. § 22:1574 (2018). To become a bail bond producer, an applicant must be free of felony convictions and must complete the Apprentice Program by working for a licensed bail bond producer for three consecutive months. *Id.* Applicants must also complete a precertification program course before their apprenticeship is finished. *Id.* § 22:1571. See generally *Bail Bond Apprentice Program Information*, LA. DEP'T INS., <https://www.lai.la.gov/industry/producer-adjuster/license-application/bail-bond-apprentice-program> [<https://perma.cc/X8ZK-6Q7E>] (last visited Aug. 2, 2018).

71. Laisne, Wool & Henrichson, *supra* note 33, at 6.

72. *Bail, Fines, and Fees*, *supra* note 66.

73. Other cities and parishes around the state also require 10% as a premium. *Id.*

74. *Id.* The bail bond office includes the additional fees in the cost assessed to the defendant and then forwards the payments to these various state agencies and officials. The bail bond office will often require additional monthly payments from the defendant. *Id.*

75. *Id.*

76. *Id.*

the court can remand him to jail and force him to pay additional fees to the court.⁷⁷

No matter which method a defendant chooses—paying the court directly, contracting with a bail bondsman, or not paying the bail and going to jail—the difficulties are exacerbated if the defendant is impoverished like over 20% of the state’s population.⁷⁸ Money that a defendant uses to pay bail or a bail bondsman could be saved for other necessary expenses, such as rent, utilities, or groceries.⁷⁹ If the defendant cannot pay either the court or a bail bondsman, he is held in jail.⁸⁰ Withheld from everyday life, defendants often lose their jobs, homes, cars, or custody of their children while jailed.⁸¹

Louisiana’s “cash bail” system is detrimental to the indigent population and contributes to the state’s high incarceration rate.⁸² Louisiana’s poverty rate is exorbitantly high⁸³ and research shows that requiring excessive bail and nominal fees from defendants perpetuates a continuing cycle of poverty, potentially wrongfully induces guilty pleas, and crowds jails.⁸⁴

77. *Id.*

78. *Louisiana*, TALK POVERTY, <https://talkpoverty.org/state-year-report/louisiana-2017-report/> [<https://perma.cc/Q786-J2CW>] (last visited Aug. 2, 2018) (reporting 2017 poverty statistics). Over 20% of Louisianans are in poverty. *Id.*

79. *Bail Fail: Why the U.S. Should End the Practice of Using Money For Bail*, JUST. POLICY INST. 13 (2012).

80. *Bail, Fines, and Fees*, *supra* note 66.

81. See generally *Bail Fail*, *supra* note 79; Bernadette Rabuy & Daniel Kopf, *Detaining the Poor: How money bail perpetuates and endless cycle of poverty and jail time*, PRISON POLICY INITIATIVE (May 10, 2016), <https://www.prisonpolicy.org/reports/incomejails.html> [<https://perma.cc/V78N-WKWJ>]; Shaun Ossei-Owusu, *Poverty’s Punishment: America’s Oppressive Bail Regime*, AM. PROSPECT (Nov. 18, 2016), <http://prospect.org/article/poverty%E2%80%99s-punishment-america%E2%80%99s-oppressive-bail-regime> [<https://perma.cc/KBB8-58TW>]; Nick Pinto, *The Bail Trap*, N.Y. TIMES (Aug. 13, 2015), <https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html> [<https://perma.cc/7YNH-GHJ5>]; Robin Steinberg, *Time for a national fund that chips away at money bail and stops criminalizing poverty*, USA TODAY (Nov. 28, 2017), <https://www.usatoday.com/story/opinion/policing/spotlight/2017/11/28/time-national-fund-chips-away-money-bail-and-stops-criminalizing-poverty/890484001/> [<https://perma.cc/5KMQ-HP5G>].

82. See generally *Bail, Fines, and Fees*, *supra* note 66; Laisne, Wool & Henrichson, *supra* note 33.

83. *Louisiana*, *supra* note 78.

84. See Laisne, Wool & Henrichson, *supra* note 33.

II. JURISDICTIONS ARE ABANDONING CASH BAIL AND MOVING TO RISK ASSESSMENT

Although Louisiana has the second highest incarceration rate per capita in the country,⁸⁵ other states also face problems of mass incarceration.⁸⁶ In recent years, many jurisdictions reduced jail populations and implemented policies so as to not detain defendants pretrial solely because of an inability to pay.⁸⁷ These states' efforts demonstrate the alternative bail systems available to Louisiana.⁸⁸

A. New Jersey Eliminates Cash Bail and Adopts the Arnold Foundation's Public Safety Assessment Tool

New Jersey had a high pretrial detention rate and a high percentage of people living in poverty,⁸⁹ prompting the state to make significant changes to its bail system in early 2017.⁹⁰ One study found that at any given point in time, around 75% of New Jersey's jail population was simply awaiting

85. See *supra* note 30.

86. See, e.g., PRETRIAL SERVICES: ADMINISTRATIVE OFFICE OF THE COURTS, PRETRIAL REFORM IN KENTUCKY (Jan. 2013); *First-of-its-Kind New Report Finds New Jersey Packed With Pretrial Inmates Unable to Pay Often Nominal Bail Amounts*, DRUG POLICY ALLIANCE (Apr. 7, 2013), <http://www.drugpolicy.org/news/2013/04/first-its-kind-new-report-finds-new-jersey-jails-packed-pretrial-inmates-unable-pay-oft> [<https://perma.cc/W95S-CNDN>]; Megan Cassidy, *Bond companies 'extremely worried' as Arizona moves away from cash bail bonds*, AZCENTRAL.COM (June 21, 2017), <http://www.azcentral.com/story/news/local/arizona/2017/06/21/arizona-courts-back-away-cash-bail-system-bond-companies-worried/400209001/> [<https://perma.cc/2XCZ-WZ2B>]; Jon Schuppe, *Post Bail*, NBC NEWS (Aug. 22, 2017), <https://www.nbcnews.com/specials/bail-reform> [<https://perma.cc/4WR2-7NQC>].

87. See generally *supra* note 86.

88. See generally *supra* note 86.

89. See *Small Area Income and Poverty Estimates (SAIPE) Program*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/saipe.html> [<https://perma.cc/DKN6-NSR7>] (last visited Aug. 2, 2018); *Incarceration Trends: New Jersey*, VERA INST. JUST., <http://trends.vera.org/rates/new-jersey?incarcerationData=all> [<https://perma.cc/6F8A-UTVQ>] (last visited Aug. 2, 2018). For perspective, Louisiana has a higher pretrial detention rate and higher poverty rate. New Jersey's pretrial detention rate is 178.6 per 100,000 residents and Louisiana's is 454.8. *Incarceration Trends*, VERA INST. JUST., <http://trends.vera.org/incarceration-rates?data=pretrial&geography=states> [<https://perma.cc/JUA3-LR4A>] (last visited Aug. 2, 2018). New Jersey's poverty rate is estimated at 10.4% and Louisiana's is estimated at 20.1%. *Small Area Income and Poverty Estimates (SAIPE) Program*, *supra*.

90. See, e.g., *infra* note 94.

trial.⁹¹ Of the pretrial inmates, the average length of incarceration was over ten months.⁹² Further, 40% of the defendants in jail were there because they could not afford bail of \$2,500 or less.⁹³

On November 4, 2014, New Jersey voters approved a constitutional amendment to take effect on January 1, 2017.⁹⁴ The amendment declared that, “All persons shall, before conviction, be eligible for pretrial release” and provided the legislature with the power to “establish” a system of pretrial release.⁹⁵ Instead of a cash bail system, New Jersey courts now use a “risk assessment” analytic tool to determine whether a particular defendant is a flight risk or a danger to society.⁹⁶

The risk assessment tool, called the “Public Safety Assessment tool” (“PSA”) is “a pretrial risk assessment tool that is designed to assist judges in making release/detention determinations.”⁹⁷ Created by the Laura and John Arnold Foundation,⁹⁸ the tool considers a number of factors related to the defendant to determine whether the court should release or detain the defendant.⁹⁹ The factors focus on the defendant’s prior convictions and

91. *First-of-its-Kind New Report Finds New Jersey Packed With Pretrial Inmates Unable to Pay Often Nominal Bail Amounts*, *supra* note 86.

92. *Id.*

93. *Id.*

94. N.J. CONST. art. 1, ¶ 11; NEW JERSEY JUDICIARY, 2017 REPORT TO THE GOVERNOR AND THE LEGISLATURE, <https://njcourts.gov/courts/assets/criminal/2017cjrannual.pdf> [<https://perma.cc/7CR9-ZN58>] (last visited Nov. 14, 2018); Rice, *supra* note 36; Molly O’Brien, *New Bail and Speedy Trial Laws Take Effect in New Jersey*, NEW BRUNSWICK TODAY (Jan. 28, 2017), <http://newbrunswicktoday.com/article/new-bail-and-speedy-trial-laws-take-effect-new-jersey> [<https://perma.cc/7Y82-7XZN>].

95. N.J. CONST. art. 1, ¶ 11.

96. *See supra* note 94.

97. *See supra* note 94.

98. *See supra* note 94. The Arnold Foundation is a private foundation with initiatives like education, sustainable public finance, and criminal justice. LAURA & JOHN ARNOLD FOUND., <http://www.arnoldfoundation.org/> [<https://perma.cc/8PJK-UVH5>] (last visited Aug. 2, 2018). The crux of its criminal justice initiative is a risk assessment analytical algorithm called the “Public Safety Assessment” tool. *Public Safety Assessment: Risk Factors and Formula*, LAURA & JOHN ARNOLD FOUND., <http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf> [<https://perma.cc/S44E-GE8Q>] (last visited Sept. 30, 2018).

99. Jessica Mazzola & Thomas Moriarty, *How bail reform is playing out in N.J.’s largest city*, NJ.COM (May 28, 2017), https://www.nj.com/essex/index.ssf/2017/05/how_bail_reform_is_playing_out_in_njs_largest_city.html [<https://perma.cc/3S U9-5K4P>]; *Public Safety Assessment: Risk Factors and Formula*, *supra* note 98; *PSA Research*, *supra* note 36.

failures to appear, determining the “risk factor” associated with allowing a defendant to remain out of jail before his trial.¹⁰⁰

The Laura and John Arnold Foundation developed the PSA tool by compiling statistics from more than 1.5 million cases in over 300 jurisdictions throughout the United States.¹⁰¹ Analyzing that data, developers identified the factors or characteristics most predictive of whether a defendant will commit a new crime—violent or nonviolent—or fail to appear in court.¹⁰² The factors include, among others: whether the current offense is violent; whether prior convictions exist; the defendant’s age at the time of arrest; and the defendant’s history of failure to appear in court.¹⁰³ The PSA does not consider factors like race, ethnicity, or geography.¹⁰⁴

Today, after a defendant is arrested in New Jersey, a pretrial detention officer interviews the defendant.¹⁰⁵ The officer reads the defendant’s criminal record, asks questions to obtain the information needed for the PSA, and “plugs in” the answers the algorithm requires.¹⁰⁶ The tool outputs a number that determines the defendant’s risk factor, which in turn determines whether the defendant must remain in jail until trial.¹⁰⁷ The tool computes the defendant’s risk factor by comparing his information to over 1.5 million criminal cases in its databases.¹⁰⁸ A judge then reports the resulting assessment at a hearing for the defendant, which must take place within 48 hours of the initial arrest.¹⁰⁹

If the assessment determines that the defendant is not a risk, the defendant may return home and is placed in pretrial services.¹¹⁰ The pretrial services office notifies the defendant of upcoming court dates and may include monitoring services, such as GPS tracking devices.¹¹¹ If the defendant’s assessment number is high, indicating he is a high-risk

100. *Public Safety Assessment: Risk Factors and Formula*, *supra* note 98.

101. *PSA Research*, *supra* note 36.

102. *Id.*

103. *Id.*

104. *Public Safety Assessment: Risk Factors and Formula*, *supra* note 98.

105. NEW JERSEY JUDICIARY, *supra* note 94; Rice, *supra* note 36.

106. *See supra* note 105.

107. *See supra* note 105.

108. *PSA Research*, *supra* note 36.

109. John DeRosier, *Is New Jersey’s new bail reform system actually working?*, PRESS ATLANTIC CITY (Mar. 30, 2017), http://www.pressofatlanticcity.com/news/crime/courts/is-new-jersey-s-new-bail-reform-system-actually-working/article_83c8b0ca-7946-5164-a00d-581864614836.html [https://perma.cc/Y3TP-3BES]; NEW JERSEY JUDICIARY, *supra* note 94.

110. *See supra* note 105.

111. *See supra* note 105.

defendant, he is not allowed to leave jail, and instead the court detains him without bail.¹¹²

Since the constitutional amendment, the New Jersey jail population has decreased, leading reform advocates and state officials to hail the New Jersey program as a success.¹¹³ In July 2017, New Jersey released reports analyzing the number of people in its jails,¹¹⁴ which showed the number of pretrial defendants in county jails dropped by more than 33% in comparison to the year before the bill's passage.¹¹⁵ Another study found the pretrial population of New Jersey jails had dropped 20% in the first six months of the PSA's usage.¹¹⁶ Following New Jersey's successful adoption of the tool, other jurisdictions around the country have also begun using the tool in their own criminal justice systems.¹¹⁷

B. Other Jurisdictions Are Buying into Risk Assessment

New Jersey is not the only jurisdiction to adopt the Arnold Foundation's PSA.¹¹⁸ Over 30 jurisdictions have adopted the tool in some

112. See *supra* note 105.

113. See, e.g., NEW JERSEY JUDICIARY, INITIAL RELEASE DECISIONS FOR CRIMINAL JUSTICE REFORM ELIGIBLE DEFENDANTS (2017), <https://www.judiciary.state.nj.us/courts/assets/criminal/cjrsummaryrpts.pdf> [<https://perma.cc/2HBU-2BCJ>]; Katherine Landergan, *Months into new system, attorney general toughens N.J. bail reform rules*, POLITICO (May 24, 2017), <http://www.politico.com/states/new-jersey/story/2017/05/24/months-into-new-system-attorney-general-revises-bail-reform-rules-112311> [<https://perma.cc/RN3T-HF3B>].

114. NEW JERSEY JUDICIARY, *supra* note 113.

115. S.P. Sullivan, *Here's how much N.J. jail population fell since bail reform*, NJ.COM (July 26, 2017), http://www.nj.com/politics/index.ssf/2017/07/njs_bail_population_dropped_20_percent_in_6_months.html [<https://perma.cc/V6KF-NR VG>]. Another report compared the number of defendants detained pretrial before and after the reform. In June 2016, jails detained 8,332 defendants pretrial and by June 2017, five months after the reform, that number had dropped to 5,717. Schuppe, *supra* note 86.

116. Sullivan, *supra* note 115.

117. See Schuppe, *supra* note 86; PSA Research, *supra* note 36.

118. See Schuppe, *supra* note 86. Other jurisdictions that have adopted the Arnold Foundation's Public Safety Assessment tool include: the State of Arizona; San Francisco and Santa Cruz Counties in California; Volusia County in Florida; Bernalillo County in New Mexico; Allegheny County (contains Pittsburgh) in Pennsylvania; Pennington and Minnehaha Counties in South Dakota; Kane, Cook (contains Chicago), and McLean Counties in Illinois; the State of Kentucky; Mecklenburg County (contains Charlotte) in North Carolina; Lucas County (contains Toledo) in Ohio; Harris County (contains Houston) in Texas; Yakima County in Washington; and Dane and Milwaukee Counties in Wisconsin. *Id.*

fashion, and some of these jurisdictions demonstrate alternative, less-expansive approaches compared to New Jersey's dramatic overhaul.¹¹⁹

Kentucky adopted bail reform throughout the state in January 2017.¹²⁰ The Kentucky Supreme Court signed an order creating the Administrative Release Program and adopted three "categories of risk" for use in pretrial service assessments based on criteria from the PSA risk assessment tool.¹²¹ By assigning a score from 2 to 12 to a defendant, the pretrial service officer reports that the defendant is either a low-, moderate-, or high-risk defendant.¹²² The risk categories correspond to a recommended result: jails release low-risk defendants on their own recognizance with conditions; jails release moderate-risk defendants on their own recognizance with supervision; and jails release high-risk defendants only upon judicial review and with supervision.¹²³ The Kentucky Supreme Court stated that the purpose of the program was to "expedite pretrial release of low to moderate risk defendants" and to "reserv[e] resources for higher-risk defendants."¹²⁴ The Supreme Court hoped the program would "increase efficiency" of its pretrial supervision.¹²⁵

In Arizona, few courts used pretrial services and a risk assessment system prior to 2017, but in April 2017, the Arizona Supreme Court urged judges to embrace a statewide risk assessment system.¹²⁶ Arizona's risk assessment tool is also based on the Arnold Foundation's Public Safety Assessment tool and relies on nine variables, which include the

119. Schuppe, *supra* note 86.

120. *Authorization for the Non-Financial Uniform Schedule of Bail Administrative Release Program*, Ky. Sup. Ct. Order 2016-10 (2016). Kentucky's statewide overhaul followed its earlier, more moderate attempts at bail reform. B. Scott West, *The Next Step in Pretrial Release is Here: The Administrative Release Program*, ADVOCATE, KY. DEP'T PUB. ADVOC. (Jan. 2017), [https://dpa.ky.gov/Public_Defender_Resources/The%20Advocate/Advocate%20Newsletter%20Dec%202016%20\(COLOR%20-%20FINAL%20modified%201-23-17\).pdf](https://dpa.ky.gov/Public_Defender_Resources/The%20Advocate/Advocate%20Newsletter%20Dec%202016%20(COLOR%20-%20FINAL%20modified%201-23-17).pdf) [https://perma.cc/7ZS8-E2XG]. In 2010 and 2011, jails released around 70% of pretrial defendants, and 90% of those defendants made all future court appearances. In addition, 92% of those defendants were not re-arrested while on pretrial release. PRETRIAL SERVICES: ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 86.

121. Ky. Sup. Ct. Order 2016-10.

122. *Id.*

123. West, *supra* note 120.

124. Ky. Sup. Ct. Order 2016-10.

125. *Id.*

126. Cassidy, *supra* note 86.

defendant's prior felony convictions and prior failures to appear within the last two years.¹²⁷

Harris County, Texas, also began using the PSA after a federal judge mandated its implementation.¹²⁸ Harris County courts came under scrutiny in early 2017 when arrestees of the county brought suit in federal court against the county court system and sheriffs alleging violation of the Equal Protection and Due Process Clauses.¹²⁹ In *ODonnell v. Harris County, Texas*, the district court judge found in favor of the plaintiffs and overturned the county's bail system, finding the system disproportionately affected the county's indigent populations.¹³⁰

The judge found that Harris County jails detained 40% of people arrested on misdemeanor charges from bail hearings until trials were completed.¹³¹ In June 2017, after the United States Supreme Court refused their request for an emergency block, Harris County officials stated they would comply with the ruling and allow defendants detained for inability to pay bail to enter pretrial services.¹³² Despite Harris County's reluctance,

127. *Id.*

128. Schuppe, *supra* note 86. Harris County includes the City of Houston. *See* HARRIS COUNTY, TEX., <https://www.harriscountytexas.gov> [<https://perma.cc/N9G2-NABE>] (last visited Aug. 2, 2018). Harris County has almost as many people as the entire State of Louisiana. *Harris County, TX & Louisiana Population Comparison*, 2010 CENSUS INTERACTIVE POPULATION SEARCH, <https://www.census.gov/2010census/popmap/> [<https://perma.cc/55HH-UXEC>] (select Harris County, Texas, and search location Louisiana to add to same table). Harris County's population is estimated as 4,092,459 and Louisiana's is 4,533,372. *Id.*

129. *ODonnell v. Harris Cty., Tex.*, 251 F. Supp. 3d 1052, 1061 (S.D. Tex. 2017). *See* Eli Rosenberg, *Judge in Houston Strikes Down Harris County's Bail System*, N.Y. TIMES (Apr. 29, 2017), <https://www.nytimes.com/2017/04/29/us/judge-strikes-down-harris-county-bail-system.html> [<https://perma.cc/9TNX-GP4Q>].

130. *ODonnell*, 251 F. Supp. 3d at 1150–51. *See* Rosenberg, *supra* note 129.

131. Rosenberg, *supra* note 129.

132. *The Latest: Harris County Will Comply With Bail Reform Order*, U.S. NEWS (June 7, 2017), <https://www.usnews.com/news/best-states/texas/article/2017-06-07/the-latest-supreme-court-allows-poor-houston-inmates-freed> [<https://perma.cc/63ZE-Y6AP>]. As of June 1, 2018, the United States Court of Appeals for the Fifth Circuit affirmed in part, reversed in part, vacated in part, and remanded the district court decision. *ODonnell v. Harris Cty.*, 892 F.3d 147 (5th Cir. 2018). Notably, in 2017, Louisiana's Attorney General, Jeff Landry, joined a legal brief defending the Harris County bail system. Julia O'Donoghue, *Louisiana AG Jeff Landry enters case defending Texas bail system*, NOLA.COM (Aug. 10, 2017), https://www.nola.com/politics/index.ssf/2017/08/landry_cash_bail.html [<https://perma.cc/94FW-NWVY>].

however, recent research suggests that the other Texas counties and jurisdictions around the country should follow suit.¹³³

Additionally, although not using the Arnold Foundation's PSA, other jurisdictions have passed laws or rules—either in the past or in recent years—to reform pretrial practices by decreasing or eliminating the use of cash bail.¹³⁴ For instance, the District of Columbia amended its bail laws in the early 1990s.¹³⁵ Now, “although secured money bail is still available under the D.C. Code, such bail is almost never imposed in misdemeanor cases.”¹³⁶ More recently, Alaska passed a law in July 2016, which portions went in to effect on January 1, 2018, that created the Pretrial Enforcement Division.¹³⁷ The Division's purpose is to use a pretrial assessment instrument to determine the risk of defendants and place them in one of three categories, which in turn determines whether they are eligible for pretrial release on their own recognizance.¹³⁸ One study suggested that Alaska taxpayers could save \$380 million.¹³⁹ In July of 2017, the Maryland Court of Appeals created Court Rule 4-216.1, which “permit[s] the release of a defendant pending trial *except* upon a finding by a [judge] that . . . there is a reasonable likelihood that the defendant . . . will not appear when required, or . . . will be a danger to . . . the community.”¹⁴⁰

133. See Dottie Carmichael et al., *Liberty and Justice: Pretrial Practices in Texas*, TEX. A&M U. PUB. POLICY RES. INST. (2017).

134. See *infra* notes 135–42 and accompanying text.

135. See, e.g., D.C. CODE § 23-1321 (West 2016); Marimow, *supra* note 36; *What Changed After D.C. Ended Cash Bail*, NPR (Sept. 2, 2018), <https://www.npr.org/2018/09/02/644085158/what-changed-after-d-c-ended-cash-bail> [<https://perma.cc/J9FE-V9CJ>].

136. *ODonnell v. Harris Cty., Tex.*, 251 F. Supp. 3d 1052, 1078 (S.D. Tex., Hous. Div. 2017).

137. See, e.g., 2016 Alaska Sess. Laws Ch. 36 (S.B. 91); *Senate Bill 91: Summary of Policy Reforms*, UAA JUST. CTR. (last updated Sept. 19, 2016), https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/alaska-justice-forum/33/1spring2016/b_sb91_summary.cshtml [<https://perma.cc/SQ4X-486L>]; Bryce Covert, *This Deep Red State Just Ended Cash Bail*, APPEAL (Jan. 10, 2018), <https://theappeal.org/alaska-ends-its-reliance-on-money-bail-ff1cc0e19730/> [<https://perma.cc/UN94-56UW>]; Vera Staff, *Alaska Moves to Eliminate Cash Bail*, VERA INST. JUST. (Jan. 18, 2018), <https://www.vera.org/blog/alaska-moves-to-eliminate-cash-bail> [<https://perma.cc/8PE2-T9SS>].

138. See *Senate Bill 91: Summary of Policy Reforms*, *supra* note 137; Covert, *supra* note 137.

139. Covert, *supra* note 137.

140. Md. Rules, Rule 4-216.1(b)(1)(B) (West 2017) (emphasis added). For additional information on bail reform in Maryland, see Master of Public Affairs Candidates under the supervision of Prof. Ben Jealous, *Advancing Bail Reform in*

California is another example, where Governor Brown signed a bill into law that will completely eliminate cash bail when it takes effect in October of 2019.¹⁴¹ The law will force courts to establish pretrial assessment services and will generally require that defendants arrested for non-violent and low-level offenses be released within 12 hours of being arrested.¹⁴²

All of these jurisdictions, whether adopting the PSA or other pretrial assessment strategies, have made strides to reform their bail practices.¹⁴³ While critics may argue that these jurisdictions are not similar to the Pelican State, research from Louisiana's neighbor, Texas, suggests that risk assessment tools may be useful anywhere.¹⁴⁴

C. A Neighbor State's Encouraging Research into Risk Assessment Tools

Texas A&M University's Public Policy Research Institute released a report on Texas's pretrial practices in March 2017.¹⁴⁵ The report focused on comparing cash bail and risk assessment-based pretrial systems, and analyzed over 3.5 years of criminal case data from Tarrant and Travis counties.¹⁴⁶ The data highlighted five critical findings.¹⁴⁷

First, the report found that a pretrial risk assessment tool built around an algorithm could successfully predict a defendant's chance of failure on

Maryland: Progress and Possibilities, PRINCETON U. SCH. PUB. & INT'L AFF., http://www.princeton.edu/sites/default/files/content/Advancing_Bail_Reform_In_Maryland_2018-Feb27_Digital.pdf [<https://perma.cc/BY5X-V354>] (last updated Feb. 27, 2018).

141. See 2018 Cal. Legis. Serv. Ch. 224 (S.B. 10) (West).

142. See *id.*; Khorri Atkinson, *California becomes first state to fully abolish cash bail*, AXIOS (Aug. 29, 2018), <https://www.axios.com/california-becomes-first-state-to-abolish-cash-bail--edd2389e-daa0-4f98-8677-a48d482f46f1.html> [<https://perma.cc/V3F6-4KQJ>]. But see *ACLU of California Statement: Governor Brown Signs Bail Reform Legislation Opposed by ACLU*, ACLU SAN DIEGO & IMPERIAL COUNTIES (Aug. 28, 2018), <https://www.aclusandiego.org/aclu-of-california-statement-governor-brown-signs-bail-reform-legislation-opposed-by-aclu/> [<https://perma.cc/Y3HF-PNKK>] (Opposing California's particular bail reform legislation as granting courts too much control).

143. See *supra* notes 135–42 and accompanying text.

144. See discussion *infra* Part II.C.

145. Carmichael et al., *supra* note 133.

146. *Id.* at xiii. Tarrant County includes the city of Fort Worth and Travis County includes the city of Dallas. See TARRANT COUNTY, TEX., <http://www.tarrantcounty.com/en.html> [<https://perma.cc/44ZS-J2EA>] (last visited Aug. 2, 2018); TRAVIS COUNTY, TEX., <https://www.traviscountytexas.gov/> [<https://perma.cc/FGD7-S3PJ>] (last visited Aug. 2, 2018).

147. Carmichael et al., *supra* note 133, at xiii–xiv.

bond.¹⁴⁸ At the time, Tarrant County and Travis County were using the Ohio Risk Assessment System: Pretrial Assessment Tool, “ORAS-PAT.”¹⁴⁹ The ORAS-PAT required an extensive interview with the defendant to determine his flight risk and danger to society.¹⁵⁰ The report concluded that if police used a risk assessment algorithm tool instead of the interview system, then a higher assessment score accurately portrayed a greater chance of bond forfeiture and new criminal activity.¹⁵¹

Second, the report found using a statistical algorithm making decisions to release or detain defendants instead of the interview-based risk assessment tool would save money.¹⁵² The report concluded that the ORAS-PAT assessment tool was an inefficient use of funds.¹⁵³ The risk assessment algorithm could obtain similar results as the costly interview based system for a fraction of the cost and resources.¹⁵⁴ The Arnold Foundation’s PSA tool is specifically mentioned in the report as a practical risk assessment tool and a more viable alternative than the ORAS-PAT.¹⁵⁵

Third, the study found that risk assessment tools resulted in more accurate classifications of defendants.¹⁵⁶ In terms of classifying defendants as low-risk or high-risk, under a cash bail system, the judges “matched” the actual risk for defendants 72% of the time.¹⁵⁷ Under a risk assessment tool using a risk assessment algorithm, the matching to actual risk improved to 77%.¹⁵⁸ This finding shows that with risk assessment algorithms, jails would release fewer high-risk defendants and detain fewer low-risk defendants.¹⁵⁹

Fourth, the costs of using a risk assessment tool are more than offset by savings in other areas when defendants are properly classified pretrial.¹⁶⁰ Although pretrial service programs cost 1.5 times more with a

148. *Id.* at xiii.

149. *See id.*

150. *Ohio Risk Assessment System*, OHIO DEP’T REHABILITATION & CORRECTION, <http://www.drc.ohio.gov/oras> [<https://perma.cc/RX86-2364>] (last visited Aug. 2, 2018). The Ohio Department of Rehabilitation and Correction developed the ORAS-PAT assessment tool. *Id.*

151. Carmichael et al., *supra* note 133, at xiii.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.* at xiv.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

risk assessment tool, the costs in every other category decrease.¹⁶¹ For instance, case processing costs, such as re-arrest, court hearings, prosecution, and indigent defense, are 5% lower when courts use a risk assessment tool.¹⁶² The monetary costs to victims decrease by 72%.¹⁶³ Costs of detaining defendants decrease by 23%.¹⁶⁴ Additionally, the costs assessed to the court and judicial system incurred by misclassifying the risk of defendants are 76% lower.¹⁶⁵ Most importantly, the total costs of all the categories combined are 30% lower than if courts used a cash bail system.¹⁶⁶ These savings are mostly attributed to lower rates of new criminal activity—high-risk defendants could not commit crimes because they were detained, and low-risk defendants that were released were less likely to commit crimes.¹⁶⁷

Finally, the report concluded that use of a risk assessment tool is more fair for defendants because it considers their risk to society's safety rather than merely their ability to pay.¹⁶⁸ When a risk assessment algorithm determines whether to detain a defendant rather than the defendant's inability to pay bail, half as many people are incarcerated on a bail of \$2,000 or less, one-third as many people are held on bails of \$500 or less, and ten times as many people are released on their own recognizance.¹⁶⁹ The report adds to the great body of contemporary evidence promoting risk assessment systems.¹⁷⁰

Many jurisdictions have realized the issues associated with cash bail systems and have adopted the Arnold Foundation's Public Safety

161. *Id.*

162. *Id.*

163. *Id.* at xiv–xv. The study determined that when risk assessment is not used, more high-risk defendants are able to secure pretrial release solely based on their ability to pay. *Id.* at 27. The high-risk defendants, in turn, are more likely to commit crimes, causing damage to victims, while out of jail on bond than low-risk defendants, who can be safely released pretrial knowing that they are less likely to commit crimes. *Id.* Thus, if Tarrant County and Travis County used a risk-assessment tool, victim costs would be 3.5 times lower than in a money-bail system. *Id.* at 28.

164. *Id.* at xiv–xv.

165. *Id.*

166. *Id.* at xv.

167. *Id.*

168. *Id.*

169. *Id.*

170. *See generally id.*

Assessment tool or another similar risk assessment system.¹⁷¹ If Louisiana adopts the Arnold Foundation's Public Safety Assessment tool like other jurisdictions have, the state will adopt contemporary, progressive bail bond reform.¹⁷²

III. VALUABLE REASONS FOR LOUISIANA TO REPLACE OUTDATED CASH BAIL

Louisiana has already shown an interest in assessing its criminal justice system and incarcerating more efficiently.¹⁷³ To get "more public safety for each dollar spent," the legislature created the Louisiana Justice Reinvestment Task Force, which studies Louisiana's criminal justice system and makes recommendations to safely cut the costs of operation.¹⁷⁴ The Task Force and the Louisiana Department of Corrections already support LARNA¹⁷⁵ and TIGER,¹⁷⁶ two risk assessment tools used to determine the risk of recidivism for prisoners released after serving time post-conviction.¹⁷⁷ Further, while this Comments suggests the legislature should take statewide action, smaller jurisdictions, like Orleans Parish, have already taken steps to reduce the use of cash bail.¹⁷⁸

171. See Schuppe, *supra* note 86. See also list of jurisdictions that have adopted the Arnold Foundation's Public Safety Assessment Tool to date, *supra* note 118.

172. See *supra* note 171.

173. See LA. JUSTICE REINVESTMENT TASK FORCE, *supra* note 29.

174. *Id.* at 6.

175. The Louisiana Risk Needs Assessment ("LARNA") "identif[ies] an individual's likelihood of reoffending and inform[s] supervision levels for those on probations and parole." *Id.* at 24.

176. The Louisiana Department of Corrections is "developing and piloting" the Targeted Interventions Gaining Enhanced Reentry ("TIGER") tool, which is "a new risk and needs assessment tool that improves upon the LARNA." *Id.*

177. *Id.*

178. The New Orleans City Council eliminated cash bail for defendants charged with minor city offenses in 2017. Kevin Litten, *New Orleans City Council votes to end jailing of indigent offenders on minor crimes*, NOLA.COM (Jan. 12, 2017), https://www.nola.com/politics/index.ssf/2017/01/city_council_bail_overhaul.html [<https://perma.cc/XVH8-SH7N>]. Recently, New Orleans Mayor LaToya Cantrell wrote about her desire to use the Arnold Foundation's PSA tool. LaToya Cantrell & Jason Williams, *Smart bail reform is about promoting safety, equity and justice*, NOLA.COM (Oct. 14, 2018), https://www.nola.com/opinions/index.ssf/2018/10/bail_reform_new_orleans_1.html [<https://perma.cc/95WB-38RX>]. Even two New Orleans Saints players have spoken out against cash bail systems. Demario Davis & Benjamin Watson, *Jailing people just because they*

If Louisiana follows trends from other jurisdictions that have adopted the Public Safety Assessment tool, the state will achieve its other goals including lowering jail populations, reducing jail detention costs, and stopping the indiscriminate hindrance the cash bail system places on indigent Louisianans.¹⁷⁹

A. Louisiana Could Cash in on Lower Jail Populations

If Louisiana courts could assess defendants detained pretrial using a risk assessment tool, courts could safely release many defendants on their own recognizance until trial.¹⁸⁰ It is estimated that city and parish jails in Louisiana detain just over 14,000 defendants pretrial.¹⁸¹ Although no available data directly shows how many courts statewide detain defendants because of inability to pay bail, the number is likely similar to other reported statistics showing courts detain nearly a third of pretrial inmates because of financial inabilities.¹⁸²

For example, of the people detained in the Orleans Justice Center—Orleans Parish’s jail—in March 2016, the state had convicted only 10%; jails were detaining the other 90% pretrial.¹⁸³ In 2015, New Orleans judges imprisoned 2,482 people solely because they could not pay their court costs and fees.¹⁸⁴ In 2015, three out of ten jail beds in Orleans Parish were filled by defendants due to their inability to afford the bail set by the

can't afford bail doesn't make us safer, NOLA.COM (Sept. 30, 2018), https://www.nola.com/opinions/index.ssf/2018/09/money_bail_new_orleans.html [https://perma.cc/RF6B-N27X].

179. See generally NEW JERSEY JUDICIARY, *supra* note 113; Sullivan, *supra* note 115.

180. See *New Orleans: Who's in Jail and Why?*, VERA INST. JUST. 1–2, https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-orleans-jail-population-quarterly-report/legacy_downloads/Jail-Population-First-Quarterly-Report-Jan-March_web.pdf [https://perma.cc/E2MK-4XXQ] (last visited Sept. 30, 2018); *PSA Research*, *supra* note 36.

181. *Incarceration Trends: Louisiana*, *supra* note 31.

182. See generally *New Orleans: Who's in Jail and Why?*, *supra* note 180.

183. *Id.*

184. Times-Picayune Editorial Board, *New Orleans works to free people who are in jail because they can't pay bond: Editorial*, NOLA.COM (Nov. 18, 2016), http://www.nola.com/politics/index.ssf/2016/11/new_orleans_jail_bond.html [https://perma.cc/G6CQ-VRD4]. Further, of the defendants in that period, jails imprisoned 38% at least in part because they could not pay their bail. In total, almost 1,500 people spent over 30 days in jail because they could not pay their bail. *Id.*

court.¹⁸⁵ If courts examined the defendants under a risk assessment tool, some would be eligible to be released on their own recognizance.¹⁸⁶

Most defendants booked into the criminal justice system both nationally and in Louisiana are charged with crimes that do not carry a potential life sentence.¹⁸⁷ If Louisiana adopts a risk assessment system similar to New Jersey, therefore, most of the pretrial defendants will be eligible for release by the risk assessment tool.¹⁸⁸ New Jersey saw a 20% reduction in its statewide jail population in the six months following the implementation of the PSA.¹⁸⁹ Louisiana could see a similar reduction in its jail population if the state adopts the PSA.¹⁹⁰ If jails released 20% of the 14,000 pretrial defendants, equal to New Jersey's reduction, Louisiana courts would release 2,800 defendants safely on their own recognizance within six months of the PSA's implementation.¹⁹¹

B. With Lower Jail Populations, Louisiana Could Save on Detention Costs

With fewer defendants in jails, the cost of maintaining Louisiana jails would reduce.¹⁹² One report estimates the average daily cost of an inmate in a Louisiana jail is \$24.39, by far the lowest allocation of any state.¹⁹³ Thus, the average annual cost of detaining one defendant in a local jail is estimated as \$8,902.¹⁹⁴ Presuming that Louisiana's jail populations

185. Laisne, Wool & Henrichson, *supra* note 33.

186. *See PSA Research, supra* note 36.

187. *See* LA. COMM'N ON LAW ENFORCEMENT, CRIME IN LOUISIANA 2013 (2013).

188. *See PSA Research, supra* note 36; Sullivan, *supra* note 115.

189. *See supra* note 188. *See also* NEW JERSEY JUDICIARY, *supra* note 94. The New Jersey Judiciary estimated that pretrial detention decreased by 20% over the first year of implementation and decreased by 35% over three years. *Id.*

190. *See supra* note 188.

191. Math can be difficult for lawyers and law students. Twenty percent of 14,000 is 2,800.

192. *See generally* Christian Henrichson, Joshua Rinaldi & Ruth Delaney, *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*, VERA INST. JUST. (May 2015), <https://www.vera.org/publications/the-price-of-jails-measuring-the-taxpayer-cost-of-local-incarceration> [<https://perma.cc/WVR2-3LPH>]; Sullivan, *supra* note 115.

193. Cindy Chang, *Louisiana is the world's prison capital*, NOLA.COM (May 13, 2012), http://www.nola.com/crime/index.ssf/2012/05/louisiana_is_the_worlds_prison.html [<https://perma.cc/FY2E-9SYA>].

194. A \$24.39 per diem multiplied by 365 days equals an \$8,902.35 annual cost to detain a defendant. For comparison, in 2015, one report calculated that the average nationwide annual cost of keeping a defendant in a local or county jail

decline, like in New Jersey, the jail population could reduce by 20% in six months.¹⁹⁵ The decrease in jail costs for Louisiana parishes and cities could be nearly \$25 million across the state.¹⁹⁶

Jurisdictions only recently began adopting risk-based assessment tools,¹⁹⁷ thus, the statistics released reflect only months of reform—not reductions following a full fiscal year or more time for the new system to fully integrate itself into statistics.¹⁹⁸ Even the example used—a 20% reduction in New Jersey—comes after only *six months* of the tool's

was \$47,057. Henrichson, Rinaldi & Delaney, *supra* note 192. The lowest reported annual detention cost of that particular study was \$17,396 in Cherokee County, Georgia. *Id.*

195. See discussion *supra* Part III.A, which calculates that Louisiana could see a 2,800 reduction in defendants detained pretrial in first six months of implementation; see Sullivan, *supra* note 115.

196. A 20% reduction of the estimated 14,000 people detained pretrial in Louisiana jails would mean 2,800 defendants potentially removed from jail as low-risk. By jails not detaining those 2,800 defendants, averaging a cost of \$8,902 each, Louisiana's parishes and cities could save an estimated \$24,926,580. Of course, implementing pretrial service systems would cost money, meaning that this is not the end of the budgetary math problem. In fact, the New Jersey Judiciary estimated that a dedicated funding stream would be needed to continue at current operation, rather than relying on just court costs and fees. See NEW JERSEY JUDICIARY, *supra* note 94. Proponents of pretrial service systems advocate, however, that over time, the money saved by not detaining low-risk individuals outweighs the cost of maintaining a pretrial services system. The Pretrial Justice Institute compiled statistics on jurisdictions that *have* seen cost reductions after implementation of pretrial service systems. *Pretrial Justice, How Much Does It Cost?*, PRETRIAL JUST. INST., <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4c666992-0b1b-632a-13cb-b4ddc66fadcd> [<https://perma.cc/UNS7-UP4F>] (last visited Nov. 14, 2018). These successful systems vary in jurisdiction-wide cost because of the various factors unique to each jurisdiction that determine how much funding is needed. *Id.* The Pretrial Justice Institute, along with the National Center for State Courts, even released a report to guide jurisdictions in creating and funding a pretrial services system and what factors to consider when doing so. *Estimating the Costs of Implementing Pretrial Assessment and Monitoring Services*, PRETRIAL JUST. INST. & NAT'L CTR. FOR ST. CTS., <https://www.ncsc.org/~media/Microsites/Files/PJCC/Estimating%20the%20Costs%20of%20Implementing%20Pretrial%20Assessmnt%20and%20Monitoring%20Services%20PJI%20and%20NCSC.ashx> [<https://perma.cc/4NQK-KT68>] (last visited Nov. 14, 2018).

197. See PSA Research, *supra* note 36.

198. See Sullivan, *supra* note 115.

usage.¹⁹⁹ If the calculations are remotely accurate, parishes in Louisiana could see budget reductions that surpass these preliminary figures.

The New Orleans cash bail system already runs a deficit.²⁰⁰ The Vera Institute of Justice in New Orleans gathered data on the money that the local government collected when defendants paid bail and the costs associated with jailing defendants pretrial.²⁰¹ The results showed that the cost to the government, which is the cost of detaining defendants who could not pay or had violated the terms of their bail, was higher than the obtainable revenue from those defendants' bail payments.²⁰²

In New Orleans, bail bondsmen charge a 10% premium for bonds,²⁰³ plus an additional fee of 3% of a defendant's bail, which is then distributed to the court, the district attorney, the public defender, and the sheriff.²⁰⁴ In 2015, New Orleans defendants paid over \$6.4 million to bail bondsmen; bondsmen then split those fees between themselves and the government entities that receive a fraction.²⁰⁵ From this amount, the courts, prosecutors, public defenders, and sheriffs collected a total of \$4.5 million from defendants and their families.²⁰⁶

During that same period, the City of New Orleans spent \$6.4 million solely detaining defendants that could not pay their bail.²⁰⁷ The city thus spent almost \$2 million more to jail the indigent defendants who could not pay their bail than the involved criminal justice agencies collected as revenue from requiring bail be paid.²⁰⁸ Adopting a risk-assessment-based system would alleviate such costs that parish and local jail systems incur around the state. Additionally, only low-risk defendants would be eligible for release, meaning that courts would more effectively target those defendants deemed high-risk because of their potential to commit another crime or flee the jurisdiction for pretrial detention.²⁰⁹

199. *Id.*

200. *See* Laisne, Wool & Henrichson, *supra* note 33.

201. *Id.* at 22.

202. *Id.*

203. *Id.* at 6.

204. *Id.*

205. *Id.*

206. *Id.* at 22.

207. *Id.*

208. *Id.*

209. *See* PSA Research, *supra* note 36.

C. Risk Assessment Tools Mean Safer Streets

The PSA identifies high-risk defendants as those that are most likely to flee or commit another crime.²¹⁰ The defendants that the tool selects for pretrial detention, therefore, will be those that are most dangerous to society.²¹¹ Rather than a defendant's ability to pay being the sole determination, the factors important to the safety of the community will determine which defendants jails should detain.²¹² Society need not fear because the defendants released on their own recognizance will be judicially determined to be low-risk, and the defendants that are detained will be determined to be those that are more likely to endanger the community.²¹³ This logic, however, is not without its challengers.²¹⁴

Opponents of risk-assessment-based systems and proponents of cash bail systems spread the "persistent myth in America that money bail—and the dogged bondsman who will track down absconders—makes communities safer."²¹⁵ Predictably, opponents of reform continue to argue that eliminating cash bail systems threatens the safety of communities.²¹⁶ Opponents' concerns are that bail reform legislation will lead to the release of criminal defendants who will continue to commit crimes if jails are not detaining them.²¹⁷

While there are examples of jails releasing low-risk defendants nationwide on their own recognizance and prosecutors then charging the defendants with crimes while awaiting their trial,²¹⁸ defendants under cash bail systems often commit crimes after satisfying their bail payment.²¹⁹

210. *Id.*

211. *See id.*

212. *See id.*

213. *See id.*

214. *See immediately infra.*

215. Laisne, Wool & Henrichson, *supra* note 33, at 9.

216. *See, e.g.,* DeRosier, *supra* note 109; Ronald Kessler, *I Set a Defendant Free And Got Blamed When He Raped Someone*, MARSHALL PROJECT (Aug. 31, 2017), <https://www.themarshallproject.org/2017/08/31/i-set-a-defendant-free-and-got-blamed-when-he-raped-someone> [https://perma.cc/6P42-2CSM]; Nicholas Pugliese, *Bail bond industry mounts another attack on N.J. reforms*, NORTHJERSEY.COM (Aug. 7, 2017), <http://www.northjersey.com/story/news/new-jersey/2017/08/07/bail-bond-industry-mounts-another-attack-n-j-reforms/539366001/> [https://perma.cc/NT9P-Z8ER].

217. *See, e.g., supra* note 216.

218. *See, e.g., supra* note 216.

219. *See generally* Joshua Rhett Miller, *Slain student's ex was out on bail on rape charge*, N.Y. POST (Oct. 13, 2017), <http://nypost.com/2017/10/13/victim-advocate-says-slain-students-ex-should-have-been-in-jail/> [https://perma.cc/V4CG-ZZ7Z]; Austin Montgomery, *Out on Bail, Suspected of Gunplay*, BELOIT DAILY

One particularly gruesome example occurred when Matthew Darby allegedly killed his ex-girlfriend, Alina Sheykhet, while on bail for two separate charges from two different jurisdictions, one for rape and the other for criminal trespass.²²⁰ Darby had bonded out on both offenses, each worth \$10,000.²²¹ The rape charge, which came about nine months prior, related to an incident in which Darby broke into Sheykhet's apartment and raped her.²²² In Wisconsin, police arrested Andy "Man Man" Davis after he allegedly fired 30 shots into a home, leaving two people injured.²²³ Davis, just two months prior, had posted his \$6,000 bond for a 2015 shooting incident.²²⁴

Louisiana has seen similar difficulties with defendants released after paying bail.²²⁵ In Monroe, police arrested Blake Phillips and charged him with stalking a woman, whom he reportedly threatened to kill.²²⁶ After posting bail and agreeing to a protective order, Phillips was charged for violating the protective order.²²⁷ The Ouachita Correctional Center released Phillips again after he posted the \$7,000 bail for the second charge.²²⁸

In Baton Rouge, Louisiana State Police shot and killed Jordan Frazier, who was out on bail for a charge of possession with intent to distribute ecstasy, after he exited a vehicle with a firearm during a traffic stop.²²⁹ Frazier had previously been convicted of possession of drug paraphernalia, simple criminal damage to property, criminal trespass, and aggravated assault.²³⁰ Telly Hankton, whom police once called the most dangerous

NEWS (Sept. 29, 2017), <http://www.beloitdailynews.com/article/20170929/ARTICLE/170929714> [<https://perma.cc/E3X9-AU2U>].

220. Miller, *supra* note 219.

221. *Id.*

222. *Id.*

223. Montgomery, *supra* note 219.

224. *Id.*

225. See generally Ashley Mott, *Monroe chef accused of texting stalking victim, again*, NEWS STAR (Dec. 13, 2017), <http://www.thenewsstar.com/story/news/crime/2017/12/13/celebrity-chef-phillips-accused-stalking-again/948035001/> [<https://perma.cc/TX5X-CQU9>]; Grace Toohey, *Man killed by Baton Rouge police was free on bail, exited vehicle with gun during traffic stop, police say*, ADVOCATE (Jun. 14, 2017), http://www.theadvocate.com/baton_rouge/news/crime_police/article_39d03f9a-5114-11e7-b79a-037e9f8fa223.html [<https://perma.cc/8YZA-RBZ2>]; Covert, *supra* note 2.

226. Mott, *supra* note 225.

227. *Id.*

228. *Id.*

229. Toohey, *supra* note 225.

230. *Id.*

criminal in New Orleans, shot and killed a rival gangster while out on a \$1 million bail for a murder charge.²³¹

These accounts are instances in which a defendant avoided detention by paying bail and was subsequently involved in another crime. Instead of money determining whether a particular defendant should be allowed pretrial release, the PSA tool only considers factors relevant to the likelihood that a defendant will commit another crime if released pretrial.²³² In Lucas County, Ohio, a jurisdiction that has adopted the tool, statistics show that the tool is effectively deciding whom the courts can release safely.²³³ Comparing arrests before and after the tool's implementation, the county reported that the number of pretrial defendants arrested for other crimes had been cut in half.²³⁴ Furthermore, the number of pretrial defendants skipping their court dates dropped by over 10%.²³⁵ Ultimately, the arguments against implementation of a risk assessment tool fall short of proving cash bail's superiority.

D. Bail Bondsmen's Arguments Do Not Pay Out

Bail bondsmen argue that bail bond reform adversely affects them, as it is detrimental to their business.²³⁶ In New Orleans alone, commercial bail bond companies receive \$4.7 million from defendants each year.²³⁷ Kirk Shaw, a bail bondsman from New Jersey, after the Bail Reform and Speedy Trial Act passed, articulated his role in the criminal justice system as that of "a short-term loan officer," explaining that the fee he charges is akin to "interest on your loan."²³⁸ Shaw further explains that under "[t]he

231. Covert, *supra* note 2.

232. See PSA Research, *supra* note 36.

233. New data: Pretrial risk assessment tool works to reduce crime, increase court appearances, LAURA & JOHN ARNOLD FOUND. (Aug. 8, 2016), <http://www.arnoldfoundation.org/new-data-pretrial-risk-assessment-tool-works-reduce-crime-increase-court-appearances/> [<https://perma.cc/X4NE-94FK>].

234. *Id.*

235. *Id.*

236. See, e.g., Sulaiman Abdur-Rahman, *New Jersey bail reform threatens bond agents, sparks criminal justice debate*, TRENTONIAN (May 14, 2017), <http://www.trentonian.com/article/TT/20170514/NEWS/170519882> [<https://perma.cc/CU5R-K4TC>]; *In New Jersey, Sweeping Reforms Deliver Existential Threat To Bail Bonds Industry*, NPR, ALL THINGS CONSIDERED (July 6, 2017), <https://www.npr.org/2017/07/06/535823170/in-new-jersey-sweeping-reforms-deliver-existential-threat-to-bail-bonds-industry> [<https://perma.cc/BXH3-AK44>].

237. See Laisne, Wool & Henrichson, *supra* note 33.

238. *In New Jersey, Sweeping Reforms Deliver Existential Threat To Bail Bonds Industry*, *supra* note 236.

old system, you'd have skin in the game," however, after New Jersey's Bail Reform and Speedy Trial Act, the state's court system is "a joke."²³⁹ Although instances of defendants released without bail committing crimes while they await trial exist, despite the likely profit-motivated arguments of bail bondsmen, no evidence exists that collecting bail money from defendants is an effective crime deterrent.²⁴⁰

The bail reform evidence shows that defendants released without bail are just as likely to appear in court and avoid new arrests as people who are able to pay bail.²⁴¹ Using a risk assessment tool is safer than using a cash bail system.²⁴² The Vera Institute's data shows that defendants unnecessarily detained pretrial are more likely to commit future crimes.²⁴³ If defendants are determined to be low-risk, allowing them to return to their lives while they await trial may decrease this likelihood.²⁴⁴ Risk assessment tools also prevent high-risk defendants with means to pay bail from purchasing their freedom.²⁴⁵ No conclusive evidence exists that requiring defendants to pay bail makes communities safer—in fact, there is evidence that pretrial detention has the opposite effect.²⁴⁶ With no persuasive evidence to the contrary, adopting a risk assessment-based system is economically and morally sound.

CONCLUSION

Louisiana has made recent strides in criminal reform, yet still has one of the highest incarceration rates in the entire world.²⁴⁷ By reducing Louisiana's jail population, the parishes and cities of Louisiana would reduce spending on unnecessarily detaining defendants.²⁴⁸ Louisiana has

239. *Id.*

240. Laisne, Wool & Henrichson, *supra* note 33, at 9.

241. *Id.*

242. *Id.* See also *New data: Pretrial risk assessment tool works to reduce crime, increase court appearances*, *supra* note 233 (reporting evidence of Lucas County's shrinking pretrial defendant arrests).

243. Laisne, Wool & Henrichson *supra* note 33, at 9. See also Christopher T. Lowenkamp, Marie VanNostrand & Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, LAURA & JOHN ARNOLD FOUND. (Nov. 2013), https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJA_F_Report_state-sentencing_FNL.pdf [<https://perma.cc/U94R-AA9B>].

244. See *supra* note 243.

245. *Id.*

246. *Id.* See also *New data: Pretrial risk assessment tool works to reduce crime, increase court appearances*, *supra* note 233.

247. See *supra* note 30.

248. See discussion *supra* Part III.A–B.

already begun to recognize and address the problems of its criminal justice system,²⁴⁹ and bail bond reform could be a systematic change to push Louisiana toward its goal.²⁵⁰

To reduce the number of pretrial defendants jails detain solely because they cannot afford to pay bail, and to ensure that jails detain only the defendants that are most dangerous to society, Louisiana should adopt the Arnold Foundation Public Safety Assessment tool or a similar risk assessment tool. The tool will efficiently reduce the number of people imprisoned unnecessarily, reducing jail populations around the state, and lowering expenses associated with detaining defendants.²⁵¹

The Louisiana Legislature should abolish the discriminatory and ineffective cash bail system in its entirety, and following the example of other jurisdictions, replace it with a system that more appropriately focuses on pretrial risk assessment. This change will bring Louisiana to the forefront of the nationwide bail bond reform movement, ultimately benefitting the state both socially and economically.

*Milton J. Hernandez, IV**

249. See LA. JUSTICE REINVESTMENT TASK FORCE, *supra* note 29.

250. See discussion *supra* Part III.

251. See discussion *supra* Part III.A–B.

* J.D./D.C.L., 2019, Paul M. Hebert Law Center, Louisiana State University. This Comment is dedicated to my family and loved ones, who are always by my side and continuously encourage me to pursue worthy endeavors that I believe in. I would not be here without them. Many thanks also to Professors Robert Lancaster and Kathy Simino for their guidance, critiques, and support as I developed this Comment.