



# Data Points

## Money Bail & Pretrial Risk Assessment

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### Overview

This episode features two Research & Evaluation team members at Policy Research. Senior Research Associate Samantha Zottola, PhD, and Research Associate Kamiya Stewart, PhD, discuss key takeaways from Dr. Zottola's recently published paper, "[Comparing the Relationships Between Money Bail, Pretrial Risk Scores, and Pretrial Outcomes.](#)" Data Points is an ongoing podcast series produced by Policy Research that discusses research for social change.

### Holley Davis:

We've all seen the criminal legal system procedurals on TV and their dramatic bail hearings. The prosecution and defense counsels passionately argue for their preferred bail amount, and with a bang of the gavel, the TV judge makes their decision. The defendant is whisked away and is forced to either pay a hefty sum of money to be released back into the community, or they're forced to go to jail until their court date. Sure, it makes for a compelling television, but what about life in the real world? Does bail actually make people show up for their court dates, or is there a better, less costly solution to identify the people most likely not to appear? Could we do things differently to keep people housed, employed, connected to their families without this great financial penalty or risk of pre-trial detention? In this episode, we're going to find out.

Welcome to Data Points, where we discuss research for social change. Data Points is a production of Policy Research. My name is Holley Davis and I'm the communications director at Policy Research. In this episode, my colleagues, research associate, Dr. Kamiya Stewart, will chat with senior research associate, Dr. Samantha Zottola about her recently published paper, [Comparing the Relationships Between Money Bail, Pre-trial Risk Scores and Pre-trial Outcomes.](#) Dr. Zottola works on issues related to court processes, bail reform, and the behavioral health outcomes of people involved with the criminal legal system. Dr. Stewart investigates social issues with the goal of advancing theory and knowledge to develop and communicate real-world solutions in a timely manner. Dr. Stewart and Zottola, thank you so much for joining me today. I'm looking forward to diving into the research, so let's turn it over to you both.

### Kamiya Stewart:

Thank you so much, Holley. Sam, I'm so excited to have this conversation today. As we know, the US is in a state of criminal legal system reform and money bail oftentimes is at the forefront of conversations about the pre-trial period. We all have seen media articles about money bail and even debating how some bail reform efforts need to be rolled back. Some examples are Illinois and their elimination of

cash bail starting January 2023, and New York State and recent discussions about reinstating cash bail. Sam, I know your recent paper can help inform some of the discussion about bail reform. Let's get into it. What is money bail exactly?

### **Samantha Zottola:**

Hey, Kamiya. I'm really excited to be here as well. Money bail is a condition of pre-trial release. After a person is arrested and booked into jail, a judge or magistrate has to make the decision about where the person will be while they wait for their trial. Shortly after booking, somewhere in the neighborhood of 8 to 48 hours, a person has an initial appearance before a judge or magistrate where the decision about whether they'll be released or detained for the pre-trial period is made. At this appearance, which is really short, they last about one to five minutes, the judge or magistrate tells a person what they're being charged with, appoints an attorney for them, tells the person when their next court hearing is going to be, and then decides whether to release the person or keep them in jail until the time of their next hearing.

If the judge or magistrate decides to release the person, then they have to decide whether the person will be released with or without conditions. Release without conditions means the person just gets released, they go home to their community, and they don't have to do anything until they return to their next hearing. This is sometimes called release on recognizance or personal recognizance bond or a PR bond. Release with conditions means the person can be released, but they have to meet whatever conditions the judge or magistrate puts on them to be released and to stay released. There are a lot of different conditions that a judge or magistrate might place on someone like requiring them to be on electronic monitoring, requiring pre-trial supervision, requiring drug testing or requiring them to pay money bail.

A money bail is the most common condition of pre-trial release, and there are some variations in how money bail is assigned, but typically, a judge or magistrate will assign the amount of money that a person has to pay and they will establish whether that money has to be paid with a secured or an unsecured bond. A secured bond means that the person has to pay the money upfront, they can't get out of jail unless they pay and they get the money back at the end of the process after their trial or after they accept a plea deal if they have returned to court for all their hearings throughout the process. An unsecured bond means the person does not have to pay the money up front. They get out of jail without paying, and they only owe the money later if they don't return to court. I will say that unsecured bonds are rare. Most of the time, people get a secure bond and they have to pay the money upfront to be released.

### **Kamiya Stewart:**

I'm really glad you explained what money bail is. Sometimes, there is this assumption that money bail is required and should even be given by the criminal legal system as like a form of punishment, but as you explain, that should not be the intention. It is about a person's success during the pre-trial period. I think we always must remember that at this point, people are legally innocent under the law and sometimes

the public can forget about that. For people who are assigned money bail as a condition of their release, how would they pay bail?

### **Samantha Zottola:**

I think that's a great point, Kamiya, that we do have to remember that people are still innocent at this point, and bail is just about helping to make sure a person returns for their hearings. There are some variations in exactly how people can pay their bail. The first way is people can pay the money themselves to the court or they can have a friend or family member pay for them and they make the payment directly to the court and then they get the money back at the end of their trial or after they've accepted a plea deal if they return for all their hearings.

The other way that people can pay bail, and really the more common way is to use a bail bond agent or a bail bondsman. The way this works is a person will call the agent or a friend or family member will call for them and explain that they are in jail and that they need to be bailed out, and the agent will have a meeting with them and gather a lot of information about the person, about their situation and decide whether or not to take the person on as a client.

If the bond agent decides to take the person on, then the person has to pay a fee, which is usually about 10% of their total bail amount. If a person owes \$1,000 bail, then they will pay the bond agent \$100. At that point, the bond agent enters into an agreement with the court on the person's behalf that the bond agent will cover the bail if the person doesn't return for court and the person is able to go home and be released during the pre-trial period. The fee that people pay the agent is not refundable, so the person never gets that money back.

### **Kamiya Stewart:**

I think that's very interesting. Also, in your paper, you provide a brief history of money bail, starting with its initial intentions to what it's developed into currently. You discuss how there are racial and economic disparities in who is assigned money bail, and disparities in who can afford to pay bail. It is very alarming to know that there is a large population of people who have been assessed by the system as being individuals who will appear in court and would be safe in the community, but are in jail because they can't pay for bail. There are so many aspects to bail reform and reform during the pre-trial period in general, and you cover some of this in your research. Can you briefly describe this research? What were you looking to find out?

### **Samantha Zottola:**

Like you said, there is a lot of research out there that is really starting to call bail into question, whether bail actually works or not as a way to incentivize people to return to court or remain arrest-free for the pre-trial period. There are a lot of questions about whether there are disparities and how bail is assigned, like you said, particularly racial or economic disparities in the amounts of bail that are being assigned to people.

One of the things that my co-author, Sarah Desmarais, and I wanted to look at was whether or not bail seemed to work as a way to encourage people to come back to court and not be rearrested during the pre-trial period. We wanted to look at the relationship between bail amounts that were assigned to people and whether they failed to appear or were rearrested. We also wanted to look at an alternative to bail that is starting to be adopted more and more in courts across the country, and that is the use of pre-trial risk assessment instruments. Courts are starting to use these instruments to help inform decisions about pre-trial release, and so we wanted to look at the relationship between risk assessment scores and failure to appear in court and rearrest during the pre-trial period and compare those relationships to the relationships between bail and failure to appear in court and re-arrest during the pre-trial period.

### **Kamiya Stewart:**

That's very interesting. Can you please briefly explain what pre-trial risk assessments are?

### **Samantha Zottola:**

Yeah, absolutely. Pre-trial risk assessment instruments are assessments that are very short. They typically have 7 to about 14 items on them, and like I said, they're being used in courts across the country. There are a number of different pre-trial risk assessment instruments. There are several dozen, some are used really widely, some are developed just for one particular court to use. The items on these instruments cover a range of topics, but most of them focus on criminal history, information about the current charge and information about a person's history of failure to appear in court.

A few items also have some situational sort of items on them, so some of the assessments have items about a person's employment status or their living situation, some have items about substance use history. The idea of pre-trial risk assessment instruments is they are given when a person is booked into jail, they're filled out by someone in the court, and they produce a risk score that is associated with an estimate for how likely a person is to fail to appear in court or to be rearrested. Then, that estimate is shared with judges or magistrates so that they have that estimate at the initial appearance, which like I said, is a really short hearing that typically lasts about 30 seconds to 5 minutes. Judges and magistrates don't have a lot of information available to them at that hearing, and they don't have a lot of time to really think through these decisions.

The way pre-trial risk assessment instruments work to score a person's risk is each of the items on the assessment can typically be answered as a yes or no question, and each response has a point value. For example, a question might be, has this person ever been convicted of a felony? If the answer is yes, they get one point. If the answer is no, they get zero points. The person who's filling the assessment out goes through and answers each item and gets the point values for each response and adds those point values up. Then, the total score corresponds to a risk level or a risk score, and then that risk score corresponds to an estimate for how likely someone is to fail to appear in court or how likely they are to be rearrested. Then, that estimate is what a judge or magistrate would look at to help inform their

decision. These pre-trial risk assessment instruments provide an evidence or research-based estimate of risk that they can use to help inform their decision-making.

### **Kamiya Stewart:**

With your research question, you're asking is bail functioning in the way that it's supposed to be? What did you find?

### **Samantha Zottola:**

The short answer is we found that bail was not related to whether or not a person appeared in court or whether or not a person was rearrested during the pre-trial period. We just did not find a relationship between the amount of bail that they had been assigned and whether these outcomes happened. We did find a relationship between the pre-trial risk assessment instrument scores that people were assigned and whether they failed to appear in court or whether they were rearrested.

Specifically, we found that folks who had lower risk assessment scores were less likely to fail to appear in court and to be rearrested, and people who had higher risk assessment scores were more likely to fail to appear in court or be rearrested, and that's the relationship that we would've expected to find for the risk assessment scores. They seem to work as we would've expected them to, as we would want them to, where bail just really did not have a relationship with these outcomes the way that you would anticipate it would if bail were working as a way to encourage folks to come back to court or prevent re-arrest during the pre-trial period.

### **Kamiya Stewart:**

Wow. To me, these findings are important in many ways, especially when folks are out there thinking about reform in the criminal legal system, particularly during the pre-trial period. To me, we can think about what this means to the field, to reform and policy efforts, and to the community more broadly. For instance, and this is something that you state in your paper, is that these findings show that we should move towards implementing laws, policies and practices that are informed by research to ensure that everything is functioning how it's supposed to.

Your findings show that bail is not functioning how it's supposed to, there might be a better alternative or there is a better alternative, which is pre-trial risk assessment. When we are finding that disparities exist and know of methods to reduce them, we should move towards using those methods. I think that sometimes we are so stuck on some of the laws, policies, and practices that are already in place. We don't realize that there could be really great alternatives and some alternatives that are working the way it's supposed to for all populations of people. What would you say to anyone who's listening to this podcast, what would be your main takeaway or the main takeaway that they should get from this?

## **Samantha Zottola:**

I think there are two main takeaways that I hope people will get from this paper. The first is that we did not find support for bail. As you said, bail is something that just doesn't seem to be functioning the way we expect it would or the way that it should. I think that there are a few reasons why this might be happening. One reason is the fact that when people pay bail so often now, they're using the services of a bond agent and they're paying a fee to the bond agent that's not refundable to them. Even if they return for all of their court dates, they're not getting that money back. The idea that bail is this incentive that hangs over people's head and encourages them to come back to court is just not the reality.

I think there are also a lot of reasons why people fail to appear in court or why they might be rearrested that are not going to be influenced by money. When people fail to appear in court, sometimes it's because they can't get off work or they can't get childcare. It could be that they can't get transportation. It could be that the court process is confusing, or they simply forgot a hearing, and all of those reasons are not going to be influenced by having money hanging over their head. Even with rearrest, there are a number of internal and external factors that influence whether or not someone is rearrested. For example, folks who are living in communities that are more heavily policed are going to be more likely to be rearrested, and that's not something that's going to be influenced by the amount of bail that they had to pay.

I think the other takeaway is that we did find support for the use of pre-trial risk assessment instruments. These assessments really demonstrate the fact that most people are at low risk for failing to appear in court or being rearrested and could just be released during the pre-trial period. Then, judges and magistrates could focus more on the smaller number of people who are at higher risk and could really consider what supports or resources might be available so that some of those folks can still be released and be successful in returning to court or avoiding re-arrest.

## **Kamiya Stewart:**

Sam, the two takeaways I'm hearing is number one, bail did not work. It did not work in predicting pre-trial success in terms of whether or not someone was going to appear in court and also whether or not someone would be rearrested for a new crime. The second thing is that pre-trial risk assessments did predict pre-trial success. Thank you so much for having this conversation with me. I look forward to many others in the future.

## **Holley Davis:**

Dr. Zottola, Dr. Stewart, thank you both so much for that fascinating discussion. It seems like risk assessments could be a viable tool to identify who is and isn't likely to appear before court and help focus resources on those who need additional supports. I really appreciate the hard work behind this research, and thank you so much for sharing it with us today.

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## About

Policy Research Associates, Inc. (PRA) is a certified Women-Owned Small Business (WOSB) founded in 1987. In partnership with our sister non-profit, Policy Research, Inc. (PRI), we offer four core services: research, technical assistance, training, and policy evaluation. Through our work, we enhance systems that assist individuals with behavioral health needs on their journey to recovery.

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