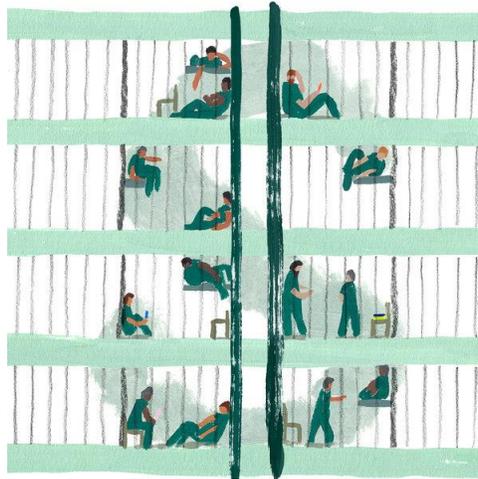




EDITORIAL

## Cash Bail's Lonely Defender



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By THE EDITORIAL BOARD

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Pretty much everyone who spends any time examining the American system of secured cash bail comes away with the same conclusion: It's unjust, expensive and ineffective, even counterproductive. People charged with crimes — all of whom are presumed innocent — get locked up for days, weeks or months not because they pose a risk of fleeing or endangering the public but simply because they're too poor to buy their freedom.

The harm that even short-term detention can cause is profound. Jobs are lost, children are removed and lives fall apart, setting off even more of the instability that is itself a predictor of crime.

The growing consensus against cash bail cuts across party lines, and includes law enforcement leaders, prosecutors, defense lawyers, the courts and religious leaders.

The only defender of the system, it seems, is the industry that profits from it. States and localities around the country have begun imposing long overdue reforms to their bail systems. But the multibillion-dollar bail-bond industry, which charges defendants to guarantee their appearance in court, is pushing hard in the other direction. The Times reported Monday on two lawsuits filed in federal court in New Jersey over the summer challenging a new state law that essentially eliminates money bail. Another suit, in New Mexico, challenges that state's Supreme Court's new rules governing bail. The industry is also fighting federal bail reform legislation.

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The industry's gripe is understandable: The shift from cash bail is bad for business. Of course, that's not how those in the industry frame their argument. They claim that public safety is the real concern. But secured money bail has never been about protecting the public; it is simply meant to ensure that a defendant shows up to court. And even in that case, money bail might be less effective than other methods, as a federal judge in Texas found in April when she struck down Harris County's bail system as unconstitutional.

But the profit motive can be a powerful bulwark against the truth. At a news conference announcing one of the New Jersey suits, Beth Chapman, president of the Professional Bail Agents of the United States, said that "people are not in jail because they're poor — they're in jail because they broke the law." That's as false as the claim made by the lawyer representing Harris County, who said that people stay in jail because they "want" to, especially in cold weather. In fact, as the judge in that case pointed out, three-quarters of the inmates in Texas jails are awaiting trial, up from less than one-third two decades ago.

The increase, largely during the 1990s and 2000s, happened as the politically influential bail-bond industry flexed its muscles and almost no one paid attention to the growing inequality and unfairness of the system.

Money bail isn't a categorically bad idea, and it can be an effective incentive. But when people are locked up simply for being poor, there is no incentive; only punishment. In that case, civil rights advocates argue, courts must follow the procedures that are required when depriving anyone of his or her liberty, including an adversarial hearing where the state must show evidence that the person is a flight risk or a danger to the community.

Ms. Chapman and others in her industry characterize their fight against bail reform as an all-out war, and they see the New Jersey litigation as a crucial early battle with potentially national repercussions. But the momentum in favor of reform is already strong, as more people come to see how pointless and unfair the cash-bail system is. If the forces behind this morally tainted enterprise want to think of it as a war, they should go right ahead — they are going to lose.