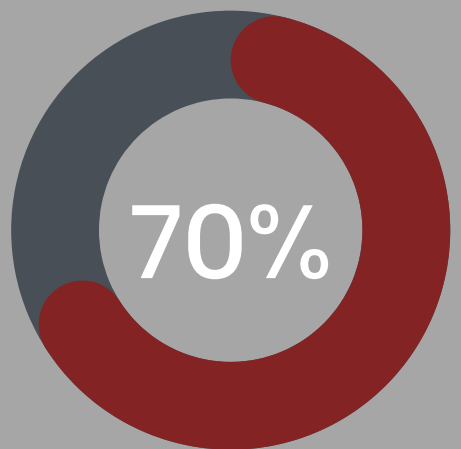# IS CASH BAIL UNCONSTITUTIONAL?

"In Robinson v. California, the Supreme Court held that it is unconstitutional under the Eighth Amendment to punish an individual for a status or condition. Poverty is a status. The cash bail system is unconstitutional under Robinson and the Eighth Amendment because it punishes the status of poverty." Lauren Bennett, *Punishing Poverty: Robinson & the Criminal Cash Bond System*, 25 Wash. & Lee J. Civ. Rts. & Soc. Just. 315 (2019).

1 UNDERMINES INNOCENCE

Cash bail punishes people before they have even been convicted of a crime. This can have devastating consequences on individuals who may be innocent but cannot afford bail and may end up losing their job, home, and relationships while incarcerated.
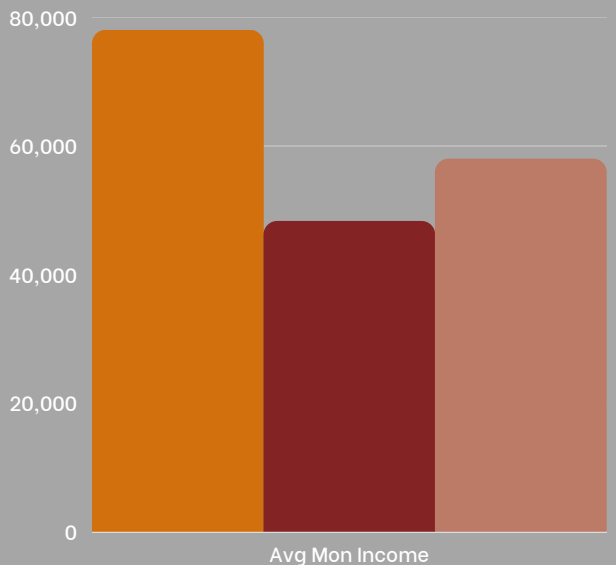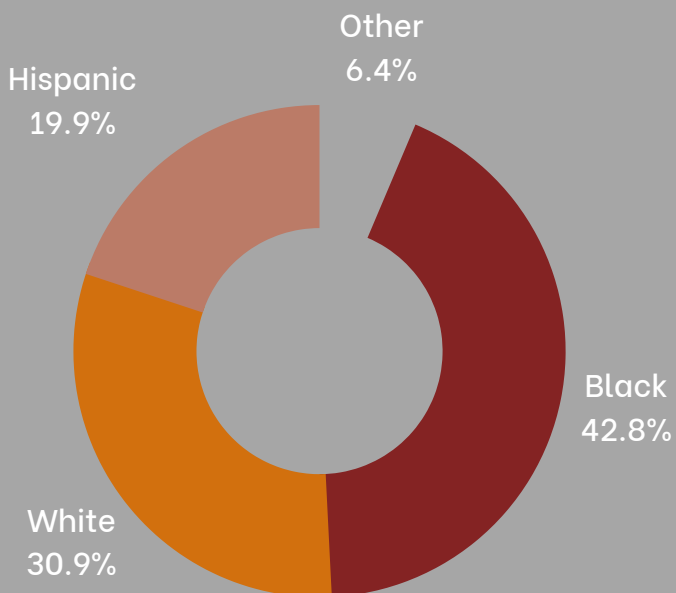
- 70% of people in local jails are being held pretrial, and many cannot afford to pay bail.
- People who cannot afford to pay bail are more likely to be Black, Hispanic, or Native American.
- Low-risk defendants who cannot afford bail are more likely to plead guilty and receive harsher sentences than those who can afford to pay bail.

70%

2 PERPETUATES INEQUALITIES

Cash bail is often set at high amounts that many people, particularly those from low-income backgrounds, cannot afford to pay. This results in people being kept in jail before their trial simply because they are poor, while wealthier individuals can pay their bail and go free. This creates an unequal justice system that favors the wealthy.
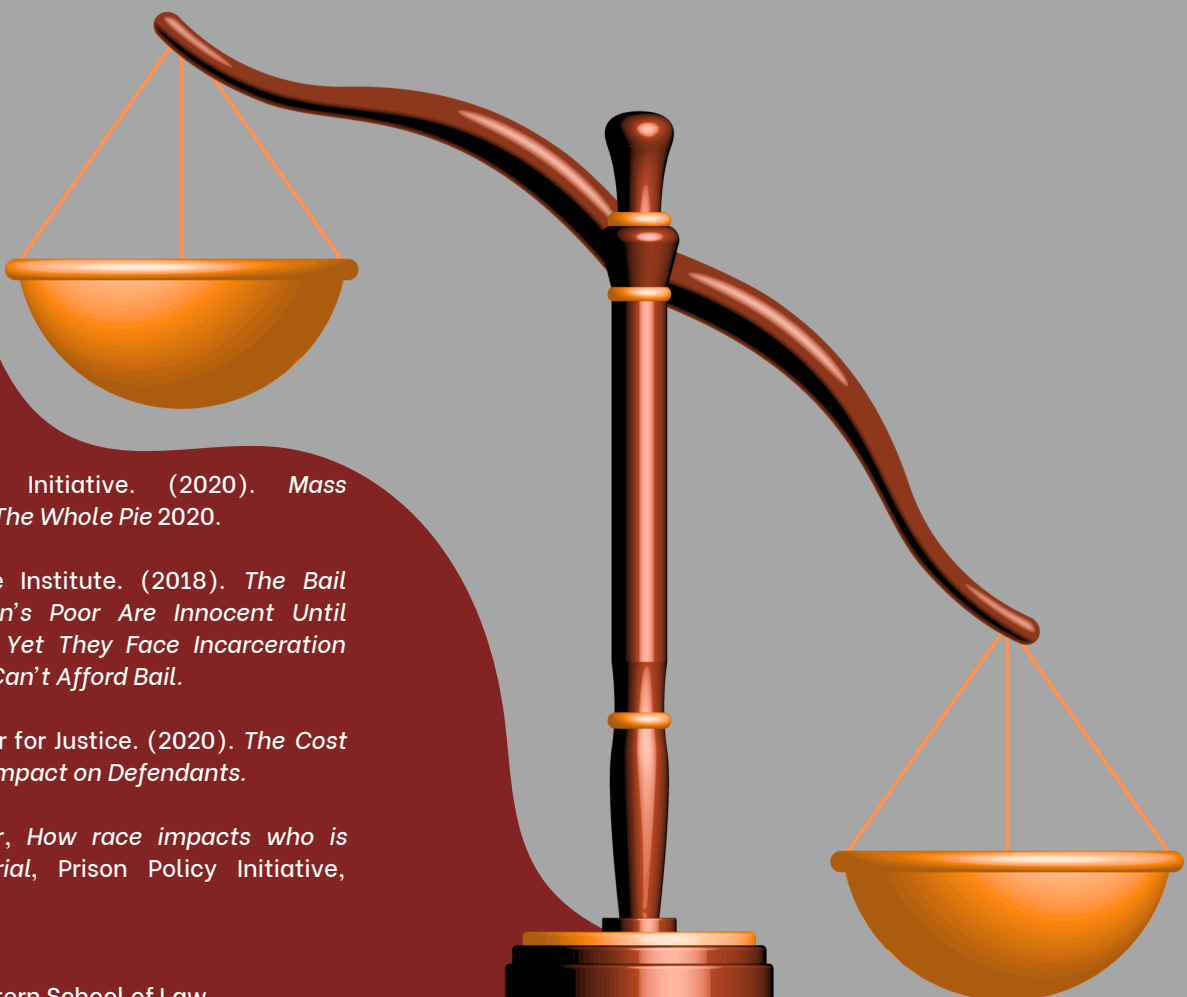
Percentage of pretrial detention population

Other 6.4%

Hispanic 19.9%

Black 42.8%

White 30.9%

Avg Mon Income

- The average bail amount in the US is $10,000, according to the Brennan Center for Justice.

3 INCREASES RECIDIVISM

Studies have shown that people who are detained pretrial are more likely to be convicted, receive longer sentences, and re-offend in the future. Cash bail can contribute to this cycle by keeping people detained for extended periods, potentially leading to a loss of employment, housing, and community support that can increase the likelihood of recidivism.

Prison Policy Initiative. (2020). *Mass Incarceration: The Whole Pie* 2020.

Pretrial Justice Institute. (2018). *The Bail Trap: American's Poor Are Innocent Until Proven Guilty, Yet They Face Incarceration Because They Can't Afford Bail.*

Brennan Center for Justice. (2020). *The Cost of Bail and Its Impact on Defendants.*

Wendy Sawyer, *How race impacts who is detained pretrial*, Prison Policy Initiative, (2019).

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