

Mackinac Center for Public Policy

Issues and Ideas Forum

“Bail Reform: Improving Pretrial Release to Benefit Defendants and Taxpayers”

Speakers:

**Heather Garretson,
Smart Justice Campaign,
ACLU of Michigan**

**Kahryn Riley,
Director of Criminal Justice Reform,
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Introduction and Moderator:

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JARRETT SKORUP: Good morning. Good morning. All right, I know it's in-depth policy work, but don't get too excited, calm down.

Thanks for joining us for another Issues & Ideas event here from the Mackinac Center for Public Policy. We're happy that you could join us, happy to come together to do another one of these on another criminal justice reform issue and a very relevant one, one that lawmakers are considering. A very tough issue, but one that's extremely important for people across the state and that affects all of us, whether criminal backgrounds or just taxpayers or people that care about people getting back and integrating back into the workforce.

So this event is called "Bail Reform: Improving Pretrial Release to Benefit Defendants and Taxpayers." Michigan's system of bail and release is ripe for reform, but any changes to this complex structure require a thorough understanding of current practices and how they diverge from best practices.

Analysts at the Mackinac Center and the ACLU of Michigan have both published papers to inform the public about bail in our state and these will be presented jointly. So you can pick up some of these, the policy briefs, these papers in the back if you're – if you're interested.

So we're going to hear from two people. Heather Garretson is an experience litigator and former law professor. She leads the ACLU of Michigan's Smart Justice Campaign. This aims to reduce Michigan's incarceration rate by half and eliminate racial disparities in the criminal justice system. Heather also researches and consults on criminal justice reform issues and the collateral consequences of a conviction. Heather speaks throughout the country and consults with policymakers and businesses on policies intended to improve the criminal justice system. She sits on the Michigan State Bar's Criminal Issues Initiative and is a Michigan State Bar fellow.

And then we'll hear as well from Kahryn Riley. Kahryn is the director of criminal justice reform at the Mackinac Center. Riley launched the center's criminal justice reform initiative in 2016 and she publishes regularly on issues pertaining to the state penal code, law enforcement, the corrections system and other matters of public safety and civil rights. She is a sought-after speaker for criminal justice reform events, legislative briefings hosted by advocacy organizations from across the political spectrum.

So we'll have each of them speak, kind of have a little bit of a discussion, and then on your table you can find cards, if you want to fill those out if you have any questions, and then we'll get to some Q&A at the end. We'll go around and pick those up and do kind of a moderated Q&A.

So without further ado, whoever's speaking first.

KAHRYN RILEY: Thank you, Jarrett.

And thanks everyone for being here today.

This is an important conversation that was underway before the Mackinac Center launched its criminal justice initiative, so we have a lot of partners in the room who have really helped inform us on this and have helped me kind of get my arms around this issue and realize how important it is and why there really is sort of free market perspective, why there are things for free market advocates to like about this issue.

So we're just going to go through a bit of an overview. I'm going to talk more about some of the reasons why the Mackinac Center is involved here and what some of these terms mean sort of on a high level. I know we have some experts in the room, but we've also got some just friends of the Mackinac Center who are just interested in these issues. So we'll discuss some of what this means and why it's important. And then Heather is going to get into some of the data and the nitty-gritty on this, which is going to be great.

So just from the beginning, right, what do we mean by pretrial? This is a portion of the criminal legal proceeding that begins after we've determined that there's enough probable cause to support prosecution of an individual, and that continues through until the charge is either dropped or the adjudication happens. And, of course, the issue here is making sure when we initiate these proceedings against a defendant, we, the state, you know, have this interest in ensuring that that person makes themselves available for these proceedings and doesn't obstruct justice in some way. In the meantime, we want to make sure that we've got good behavior, no tampering with evidence or intimidating witnesses. We want to make sure that there are no additional public safety risks that occur in between the time when the charges are brought and the cases – the sentences delivered. But this is balanced against the individual's interest in being at liberty, to move freely and go about his or her life.

So courts need to find a way to give defendants some skin in the game is a phrase that they kind of use, but also, you know, maybe putting up a little bit of collateral. That's a – that's a common option. And Heather, of course, is going to discuss the difference between bailable and nonbailable offenses and kind of get into how that works and why that works. But, of course, the law requires a presumption of innocence and liberty. So we're balancing this need for public safety and appearance against these other individual rights.

So this is an evolving issue, in part because it's centuries old. Bail is a practice that was developed in the days when judges rode circuit. There weren't standing circuit courts, but judges moved from jurisdiction to jurisdiction over a period often of years. And defendants or people who were accused of crimes may have spent months or even years as I said, you know, waiting. And it wasn't – it's not necessarily practical to hold someone during that time. And so in its initial conception, bail was developed as a way to get some surety for that – for that appearance when the judge was able to hear the case and compensation for the victim, if necessary, if that person did fail to appear.

And, of course, the policy has undergone some changes over time. In the 1960s, the reform effort sought to release more defendants on their personal recognizance, which is to say without putting up any cash bail. And that was born out of a realization that there is a disparity

in this, as in many areas of the justice system, among people who have financial resources and people who don't.

This was followed on by another wave of reform in the opposite direction in the 1980s, really out of necessity for public safety, wanting to make sure that potentially dangerous defendants weren't at liberty to do harm. And this coincided with a national wave of violent crime that spiked through the '70s. And now, of course, that great American crime decline is happening in Michigan and across the country. We're starting to see that wave recede. We're back to the same levels of safety that we enjoyed in the '60s.

And so now, people are really trying to focus on ensuring that we're using data to make sure that the outcomes we're achieving through our policies are the ones that really reflect our values. And this is also known as justice reinvestment. And, of course, part of it has to do with the fact that justice is very expensive to administer and deliver. That's part of the reason why free market advocates are concerned with make sure that when we do spend those dollars, we're spending them wisely in a way that's not going to force us to incur them again, and making sure that, of course, we're getting these aggregate outcomes that we want and also the individual level outcomes that we want.

So let's talk a little bit about the implications of this policy on our civic and economic environment. Even staunch free market advocates agree that a safe and orderly society depends on the government having this monopoly on force to keep people safe and to dispense justice. Otherwise, you would – you would start to see vigilante justice, not necessarily the due process and equitable outcomes that are, of course, the goal of the system that we use today.

And that being said, it's incumbent upon us to ensure that because we have ceded this responsibility to the government, we want to make sure that that is being carried out, again, in a way that represents our interests, but is also equitable and efficient.

And in that effort, statistics matter, right? This is – this is how we can kind of gauge whether or not this is being carried out to our satisfaction. So here's one troubling statistic that brought us to, you know, pretrial reform, brought the Mackinac Center to pretrial reform in the first place. In Michigan, as across the nation, as many as six in 10 jail inmates are there not because they're serving time on a conviction, on a sentence, but because they can't afford a cash bond to get out. So on the aggregate, this is a problem because it means that we're not reserving punishment for people who are truly culpable necessarily. And, of course, on the individual level, this is a problem because, even if someone is entitled to bail, their ability to access their freedom might come down to their financial standing. And that's never something that we want to – that's never a barrier that we want – that we want to allow to stand.

The more that we spend – the more time that we spend looking at this space – and by we, now I'm talking about criminologists and social researchers and advocates more generally – there are all kinds of studies that have started to show that defendants held pretrial face a host of collateral consequences, one of the most startling of which is that they're more likely to be convicted. And, of course, this has to do with the fact that if you are too poor to make your bond, you probably can't afford really great private defense. And even if you can, it's very

difficult to coordinate defense from inside a jail cell. And, of course, if you get convicted and you are sentenced to prison, this is very expensive both individually and, again, on the aggregate.

Another related issue is that prison sentence lengths, lengths of stay in Michigan are over four years. This is longer than the national average and longer than many of our neighbors as well.

And, of course, the prison cost is borne by the state, by state taxpayers. The rough measure for this – this is a rough measure – about \$40,000 per person, per year – per prisoner, per year – to house those individuals. And the personal cost to that, of course, is vast, trying to reenter successfully to society after that amount of time away, which, of course, leads into the economic impact, both individually and socially.

The practical effect of pulling people, absenting them from their lives is that, you know, their employer can't rely on them, their kids can't rely on them. They've been removed from their responsibilities and face the risk of losing that job, losing custody of those kids, losing their housing. And so you really want to make sure that when you're – when you're talking about depriving someone of their liberty that you're taking into account all the collateral consequences and not just the individual impact on that person, but, of course, on their family.

Again, jail is very expensive. Heather's going to get into this in her remarks in just a minute. The statewide average is \$60 per person, per day, but in some places that can run up to \$200 per person, per day. So again, this is borne by the counties now, the jails, as opposed to the prisons which are borne by the state.

Studies show that people detained pretrial, again, are more likely to be convicted. And, of course, if that happens, then you end up looking at a prison sentence which breaks, again, to being extremely expensive, but is borne, again, by the taxpayers.

I think it's also worth pointing out that crime is very, very, expensive. There are social costs that are really difficult to quantify associated with crime, but it's everything from the medical costs of being victimized to the community costs of, you know, now we live in a bad neighborhood, we're going to install an alarm system and we're going to require additional law enforcement patrols and things like that. So the economic impact can go far beyond what we can easily measure.

So that brings us again sort of back to, how does this all come together for people who are interested in advocating for free markets? You really do want to try to find a way to balance that liberty interest with the public safety and also making sure that people who are in the system who are now vulnerable because they've been deprived of some of their freedoms are being treated in a way that's going to get us all to the outcome that we agree is desirable and necessary. So although this has traditionally not been a core issue for many free-market think tanks, the Mackinac Center is one of an entire network of state-based think tanks across the country that has started to engage on this issue.

And as you can see, there's lots about this issue to like. Making sure that, because this is a proper function of state government, holding the government accountable to carrying it out efficiently and effectively, making sure that we're using tax dollars in a way that really does fully rehabilitate someone so that we're not launching them into a vicious cycle from which they can never recover and for which society will have to pay.

Making sure that we can give defendants a stake in the outcome of their trial without either needlessly detaining them or plunging them into a difficult situation just for a want of a few hundred dollars. It is just a fact that criminal defendants are more likely than the average citizen to have, you know, fewer financial means, and so that's certainly a circumstance that we need to take into account when we look at a justice decision that may be tied to a financial decision.

And, of course, we want to make sure that the families and the employers are not being overly burdened by the decisions that we're making, thinking that we're doing this in isolation because it's never, never in isolation.

And then, of course, if we do end up finding that we can – we can save some money, can we reinvest those dollars in the justice system to avert crime? Averting crime in the first place is far and away the priority, right? If we can prevent something from happening in the first place, you prevent this entire cascade of difficult decisions and expensive remedies.

And, of course, rehabilitating offenders, making sure that the things that we're doing inside of our criminal justice system are not setting people up for failure.

So with that, I'm going to just wrap up with a few suggestions. What are some things that we can do here in Michigan to improve our bail system? I think it's important to start by preserving what works. Judges should have the option to require a financial deposit to ensure future appearance and good conduct in the meantime. We want to give judges a lot of tools in their toolbox.

But, of course, that being said, we want to make sure that detention is the exception to the norm of liberty. We start with a presumption of innocence, we should also begin with a presumption of freedom. And if we decide that there's a risk that someone will fail to appear or there's a risk that something might happen while they're out on bail or bond, that we begin to condition with nonfinancial conditions and move eventually to bail.

Again, we want to tailor each decision to each defendant in order to protect due process. It's not a great idea to have a one-size-fits-all decision, especially when it comes to criminal justice. And so one of the important policy reforms that we could do here in the state of Michigan is to repeal something known as interim bond. And this is a standing bail amount that police officers are allowed to recover from people that they have arrested. And it is just a fixed portion, so people who can pay that portion can be released and people who can't are not.

And I was actually just speaking to Judge Boyd in the 55th District where they've been piloting the removal of these standing bail amounts, and their failure-to-appear rate has actually

gone down. So there's good anecdotal evidence to show that there's ways that you can give people a stake without necessarily requiring them to put up money that they don't have. So we can talk more about that, you know, either during Heather's portion or during the Q&A.

And in short, at all times, minimize the effect of a defendant's financial standing on the outcome of his or her case. Attorney at first appearance means, you know, arraignment, so from the beginning of the legal proceedings, we want to make sure that defendants have good representation and that they are able to successfully navigate the situation. And, of course, I think the MIDC just passed a standard saying that this is something that we should be providing to all criminal defendants and indigent defendants, so it looks like we're making progress on that front.

So I will be available to answer more questions after the Q&A, but now I'm going to let Heather talk a little bit about some of the statistics and outcomes that she put in her fantastic paper.

HEATHER GARRETSON: Thanks, Kahryn.

And thanks to the Mackinac Center for having us.

As Kahryn said, I'm Heather Garretson. I'm with the ACLU. And we're just really excited to partner with the Mackinac Center today to talk to you about this issue.

We have a paper that's available on the Mackinac Center's site that goes into everything I'm going to talk about in excruciating detail. So if you would like more information, you certainly can find it there.

So we're going to start by looking at how many people are in state prisons versus federal prisons. And the reason we're going to do that is because we're working with the Mackinac Center and other stakeholders in this area for state reform, right? And state reform is actually the heart of criminal justice reform. We have very few federal prisoners behind bars. Most of the people behind bars across the country are in state prisons, including local jails.

So you can see from the pie that's done by the Prison Policy Initiative that over 1.3 million people are in our local jails and prisons. State prisons house over a million people. In Michigan, state prisons house about 39,000 people. And we'll get into our jails later, but that's about 15,000 people.

So I'm just assuming everyone in here didn't go to law to law school. The difference in jails and prisons, jail is where you go when you're pretrial detained, jail is where you go if you've not been convicted of a felony, prison is where you go if you have a sentence of a year or more, basic. That, like, would pass the bar exam, but not exactly all the details. (Laughter.)

So just so we're all on the same page when we talk about pretrial detention, this is just what happens after you get arrested, right? So charges may be brought. That is up to the prosecutor's office. If charges are brought, there's an arraignment. An arraignment is just

simply a court proceeding where the court tells you what you are charged with. At the arraignment, the person who is charged is told of their conditions of release.

And I didn't put their bail here because sometimes we confuse the word bail with cash bail. And what bail really is is conditions of release. It can be a condition of a promise to come back. It can be a condition of keeping your job. It can be a condition of a no contact with someone maybe that you had an assault with. And it can be, and according to Michigan's rules, the last possible possibility is money. But they're told then at that state of their conditions of release.

Under Michigan's court rules, courts can say – and under the Constitution, courts can say there are no conditions of release for people who have committed or who have been accused of committing certain enumerated crimes. So this gets a little bit more interesting, but just stay with me here through the wonky stuff.

If a person is charged with these crimes – a violent felony while they're on probation or parole, a violent felony, but they've been convicted of a violent felony within the last 15 years, murder, treason or criminal sexual conduct – the judge does not have to order conditions of release. The judge may, but the judge does not have to.

For everybody else, if you are charged with anything but those crimes that are listed in the Constitution, our court rules give judges, who are the judges at the arraignment, the following options. A judge can release somebody on what we refer to as a PR bond, it's a personal recognizance bond, it's a really fancy way of saying I promise I'll be here when you tell me to be here. It is literally a signature bond. When I started my career litigating, I was a federal prosecutor in the federal system. Almost everybody goes home on a PR bond. You sign your name, there might be cash that if you don't come back, that's called an unsecure bond, but a PR bond is simply a promise to return.

Our court rules say that if a person is not charged with the enumerated crimes that were listed on the last slide, the court must order a PR bond unless the court finds on the record that there are conditions necessary to ensure appearance – so that's what Kahryn was talking about, right, risk of flight – or release will present a danger. So at this point, the court has to find that a PR bond will not ensure the person returns or could be a danger to society. Even if this determination is made, money does not have to be a part of it. In fact, according to our court rules, money should not yet be a part of it.

The court then moves on to possible conditions. The court rules state that to ensure appearance or safety of the community, they can order conditions that are not money bond. Those are things like keep your job, stay in school, what's your curfew, don't do drugs, stay away from that side of town, all of those conditions, keeping in mind they are geared towards someone coming back, keeping the community safe. Right?

Then if nothing else works, according to the judge, to ensure someone's appearance or ensure the safety of the community, then court can look to the money as a condition. And when

it does so, there are rules around that. Bails is not supposed to be excessive, it is supposed to be something that a defendant can in fact afford.

So with those rules, and our rules – well, we'll talk about those. With those rules, we know that people locked up in local jails – you can see on the top, the orange part of the pie – that 646,000 people are in local jails. It's sort of surprising when you get a little bit more into the pie to know that 70 percent of those people nationwide have not been found guilty of a crime. So seven out of 10 beds across America in our county jails are inhabited by people who our Constitution says are presumed innocent.

Pretrial detention in Michigan is a little bit less, but still gigantic. We have a massive prison population. In 2015 – and for those of you who don't spend all day reading jail and prison stats, 2015 is actually a relatively recent date – there were over 15,000 people in Michigan's local jails, approximately 54 percent of whom were awaiting trial and who have not been convicted of a crime. So these are people who, because of their bank account, are denied liberty, not because of any activity that the court has found they committed.

We are looking at finding out more specifically what is happening across the state. The data is really hard for a million reasons that we'll get into to understand who is where, but what we do know is that Michigan's racial disparities in our jails reflect the national trend, which is that we lock up a lot more people in our communities who are part of minority community.

So in Ingham, for instance, you can see that the court population – the county jail population, which is the yellow number, is significantly – oops, start over.

In Ingham, we have 12 percent of the population is black. You can see on that second graph there that 57 percent of the jail population is black. And it's reverse for the white population in Ingham.

What we do is we see throughout our counties – and this is repeated almost everywhere in Michigan – that we have a much smaller percentage of minorities in our population than we do behind bars. And for pretrial detention, that is also true. But what we have seen in other places where there has been reform in pretrial detention is that more people come home, but the racial disparities remain the same. So when we're talking about reform and when we have all of these stakeholders involved in these conversations, we have to make sure that we include in that conversation a way to get to the racial disparities.

Our county population shows that we have about 10 to 12 percent of county is black and 58 (percent) of our jail population is black. This is despite the fact that we know statewide and national data shows that the use and sale of drugs, which is what we have a lot of at the local level, is about the same across racial lines, right? So we have the side on the left shows percentage of people who have never used marijuana, the red is whites and the black is black individuals. And you can see it's relatively equal.

But when you move over to figure 10, you can see that prosecutions are different significantly for different races. And this comes up only because sometimes when we talk about

who's behind bars, there's a tendency to say things like, well, people who commit crimes are there. And specifically when we talk about jails, especially pretrial detention, there is a perception that people who have committed crimes are there. But people who have been accused of crimes are in our jail population, over half of them have not been convicted of anything.

And I say over half because we have this giant data gap. I don't think it's unique to Michigan. It's incredibly frustrating in Michigan. But for a variety of reasons, it's really hard to know what's going on, not the least of which is that counties are not necessarily funded to keep this kind of data. So when we come in and we ask for things, not everyone is staffed to keep this kind of data, not everyone has the IT necessary to keep this kind of data. We have a variety of courts, we have different case management systems and it's impossible to know how many people are detained pretrial or how bail decisions are made in each county.

The stats then that are in the paper that's accessible in Mackinac's site and that we'll go through a little bit here is federally collected data. And it shows that there's a wide discrepancy among Michigan county jails of people being held pretrial.

So you can see at the top here we have Kent County. We have the number of confined people and then you have the percentage of people who are on trial or arraigned. Keep in mind – so we have about 39 percent in Kent County. The only people who the court rules and our Constitution say don't have to be released on conditions are people who are accused of crimes in those first five categories. Right? Otherwise, people are supposed to be released on conditions as long as those conditions keep the community safe.

Ingham is 53 percent pretrial. Genesee is 72 (percent), which doesn't beat Newaygo which is 78 percent. So almost eight out of 10 beds in Newaygo are people who have not been found guilty of a crime. And then according to this data, Berrien County has 16 percent for their pretrial detention rate.

So we know this because federally collected data, but then some counties have done their own studies. And we know from Macomb's study that their data isn't included in the federal project. Oh, by the way, that federal data project doesn't include the three largest counties in Michigan, so they did not report when the feds asked them for their numbers. But Macomb did its own study and they found that an astounding 77 percent of beds are occupied by defendants in pretrial status in Macomb County.

So Kahryn talked about this a little bit and we get a little bit more into the details here about the cost and consequences of pretrial detention. Jail beds, as she noticed, cost on average of \$60 a day, but can go up to \$200. But one thing we are seeing as we go through the state and try and understand what kind of pretrial detention is happening is that the consequences are much greater than the fiscal cost.

We know that after 48 hours in pretrial detention, the wheels in someone's life start to fall off. If you don't – so a recent study just came out that 47 percent of Americans could not come up with \$400 if they had to. Nationwide, average cash bail is \$10,000. So if you pay 10 percent of that, that's a thousand dollars, right? So almost half of Americans don't have that

kind of disposable income. And if you don't have that kind of money available to you at your fingertips, you are in a job that if you miss for two days you're going to get fired, right? If I miss my job for two days, I have to respond to nasty emails, but I'm not going to get fired, right? But if I work at a minimum wage position where I'm expected to be there for my shift work and I don't – and I'm not there for two days, I get fired. I also am more likely to be in a housing situation where I'm living paycheck to paycheck, so if I get fired and don't have my paycheck, now the housing is gone.

And what we need to start talking about as we're talking about reform is what reform will do not just for the individual who's been accused, but not convicted of the crime, but for the community as a whole. Because for the people who pay their rent, as soon as that job is gone and that apartment is gone, now we have a family that doesn't have a place to live. So homelessness is a consequence of pretrial detention within three days that someone is locked up.

And as Kahryn noted, it also leads to harsher punishment. We know that those who are held pretrial are more likely to be sentenced to jail, and when they are sentenced to jail, they're more likely to have a longer sentence. They're also more likely to be sentenced to prison, and when they are, their prison sentences are twice as long as those who are detained pretrial.

So we've had this conversation – and Kahryn mentioned that it's important for people to have a stake in returning. But we also know from data that money is not that stake. The Brooklyn Bail Fund, The Bronx bail fund has incredible data that shows if somebody else pays their bail – so in those states, it's a community fund that pays their bail – you have over a 94 percent return rate. So it's not that defendant who's paying their bail, someone else is paying it for them. Their stake is in what everyone's stake in community is in, it is getting rid of your court case, it is staying in your job, it is staying in your community, it is staying with your family. That's the stake that people have in the game. And if we can make sure that we keep our communities safe and we identify people who should be detained as opposed to having a blanket detention policy to begin with, our communities are going to benefit.

That's it. (Applause.)

MS. RILEY: So now we're going to move into the Q&A portion of the event. You'll notice in the middle of your table – this how we do these at these I&Is – there's question cards. You can write your question on one of these cards and my colleagues Garrett and Holly will come around and collect the cards.

And I believe, Jarrett, were you going to moderate?

MR. SKORUP: I will.

MS. RILEY: Yeah.

And this is in part so that people who are accessing this event, attending this event via the internet can hear the question as it's being asked.

MR. SKORUP: All right. So I'll start off with one. So we talked a little bit about kind of going from this system where we had very stringent bail and requirements to one that relaxed that. And Kahryn had mentioned we saw pretty low crime rates, we began getting this rising crime in the '70s and '80s that kind of led to a lot of the tough-on-crime policies later in the '80s and '90s. Is there any – in your mind, is there a correlation – so if I'm – if I'm a person out there and I said, well, it seemed like having those pretty stringent bail kept these bad guys off the street and maybe helped our crime rate and when we loosened those, that led to all these problems. Is there any – what would you say to somebody that would make that point?

MS. GARRETSON: So we actually know the data is the exact opposite. The more time you spend behind bars, the more likely you are to spend time behind bars in the future. So what counties are being creative about keeping people out of the system to begin with, which is jail, are actually having a safer outcome for their communities because the people that they're keeping out are less likely to be involved in the system the next time.

MS. RILEY: And I also want to add that we're not necessarily talking about loosening restrictions or giving people some kind of pass. I think the intent in the law is to set liberty first, right? We have this presumption of innocence, which is that, you know, we're not going to punish you before we've actually established that you are culpable of a crime. Similarly, we're not going to deprive you of your liberty until we have some objective reason to believe that you're going to be a danger to others or that you're going to fail to appear for your trial. And that intent is codified, I think, but we want to make sure that our policies are actually being carried out in practice in a way that reflects that intent.

MR. SKORUP: All right, you convinced me. (Laughter.)

Three different questions all asking essentially the same thing. Which groups are opposing these reforms that you are – you are proposing and why are they – essentially, and why are they opposing that?

MS. GARRETSON: So we – I have to say, we haven't had a ton of – I mean, nobody comes up to me and says no, we should put more innocent people behind bars. What we have found is that the more communities are educated about what policies keep people safe, the more people are interested in enacting those. And the less people know about the realities of how poverty is punished, the less likely they are to be interested in reform.

MS. RILEY: And I think, too, everyone's first priority, rightly so, is public safety. So we want to ensure that people understand that establishing these mechanisms to help bail do what it's supposed to do will keep us all safer in the long run. And as I mentioned, with part of this justice reinvestment strategy, you know, folks who get a text message reminding them to come to court and appear, not because they, you know, were out a few hundred dollars and couldn't come, but, you know, just because they got the information that they needed when they needed it and were able to convey themselves to court as needed, are less likely to have an – have an outcome that's going to land them there in the future.

And so when it comes to public safety, I think it's just a matter – it's just a matter of connecting those dots for folks so that you understand, you know, there's a way that we can do this that is a great – a great balance of equity and public safety.

MR. SKORUP: One person says that they heard on the news just this morning that when Texas tried eliminating bail – or some portion of Texas, I presume – that they had a 100 percent no-show rate. Could you comment on that? Do you know anything about it?

MS. GARRETSON: That's a lie. That's my comment on that.

Barb actually can speak to that.

So what we're seeing in other states is that New Jersey, Texas, New Mexico, they have had huge bail reform. And that has been – I guess we can say we do have some opposition – that has been responded to by litigation from bail bondsmen. And the bail bondsmen have, in these states, been putting forward stories in the news that are not backed by facts.

So Barb would actually be able to speak to that much more.

But what we're seeing is the difference in the words that are in the news and the truth that is in the criminal justice system. And the failure-to-appear rate actually doesn't go up when there is bail reform.

AUDIENCE MEMBER: When it's done properly.

MS. GARRETSON: When bail reform is done properly.

MS. RILEY: Yeah. And in fact, my colleague is actually just making me aware that in Dallas, there was a lawsuit involving interim bond and interim bond was found illegal.

Is that – am I reading this correctly?

And so these are bail schedules, again, which is one of the things that we were talking about.

And so in fact I would say – I don't – I don't know about this headline that this was – the question was referencing, but Texas is having some improvements actually in the other direction.

MR. SKORUP: And look at that, she can get a text message from someone bailing her out. (Laughter.) That's why "Who Wants to Be a Millionaire" is not around any longer.

Could you speak about the heightened safety risk to people who are actually in jail? So, for example, you know, some people have been killed in jails in the last couple of years. Can you talk about kind of – kind of that angle?

So, I mean, you know, my read on that, we've focused a bit on reasons we want people back in their community, but there is a risk presumably in some cases, a direct violent crime risk when they're in jail.

MS. RILEY: Yeah. I was – this morning, I was over testifying about the Raise the Age proposal to bring Michigan's 17-year-olds into the juvenile justice system, and this is in part because young people especially face just an appalling risk of assault by other inmates or guards and of self-harm when they're incarcerated. And I'm sure it's no less so in prisons, in all prisons as well.

MS. GARRETSON: No. We know that over 73 percent of women behind bars leave with some sort of mental or physical illness that they – that is not treated when they're inside, much of which occurs when they're inside. So it's an environment that does not – does not – it's not safe to come out of.

MR. SKORUP: Well, the free market side of me has to say that's government-run health care for you. But, I'm sorry. Sorry. We're all together on this issue. (Laughter.)

I'm sorry, Kahryn. Did you have something?

MS. RILEY: Well, I was just going to add, too, that I believe the majority of people serving time in Michigan institutions are there not on drugs as commonly assumed, but actually because they did commit some type of violent offense. So that's just, you know, worth knowing and related to that answer.

MR. SKORUP: Yeah, that goes perfectly into another question that somebody had. So I'll kind of try to combine two of them here. So kind of, what's the mix of crimes that we're talking about here? And specifically for people that, if you – if you get these reforms that maybe would be back out in the community, do we have major crimes versus crimes, that kind of thing?

Heather, you kind of talked a little about that in your presentation.

And then along that, Heather had mentioned regarding the data showing these disparities in convictions and essentially that the bail is not resulting in better outcomes. Are they holding for the types of crimes that people are committing? So, for example, someone who gets bond for a drug possession, are they three times as likely to get convicted and serve three times longer than someone who gets the personal recognition and is able to go back in the community?

MS. RILEY: OK. Maybe we should break those down and take the questions one at a time.

MR. SKORUP: All right. So basically, is the – what is the data – so we'll just take the second one first. So is the studies you're talking about where giving this bail is not resulting in what we want, which is it's not resulting in people more likely to show up and, you know, serve out and show up on time and go through the court process? Is that controlling for all these factors of what types of crimes that they are – they are committing?

MS. RILEY: Well, I think it's worth pointing out that, you know, when it – when it comes to making bail, it's not that – you know, it really comes down to, like, do you have the financial resources or do you know someone who has the financial resources to get you out? And you can either, you know, pay a portion of that bail, a portion of that with the court, which is, you know, I'm going to put this up as collateral, which I'll get it back if I appear, or I can hire a bail bondsman to pay this on my behalf, I'm going to pay that bondsman a nonrefundable fee who will put that money up and then he's going to – he's going to make sure that I make my court date.

But, you know, people who are accused of extremely dangerous crimes, if they can afford their bail, they can be released. Whereas people who are accused of extremely minor crimes can, for want of 200 (dollars), 300 (dollars), \$400 be detained in jail, lose their job, have their spouse or their partner have to quit their job in order to take care of their children and then that family goes from being a two-income family to a no-income family for want of a few hundred dollars. And the nature of the crime, when you're looking at it that way, doesn't even necessarily play into it.

MS. GARRETSON: And I think your first question went to, are we, when we're talking about reform, divvying up different types of crimes where bail reform would be able to be imposed? And the answer is no, because what we're looking at is trying to get our court system focused on what our rules want us to look at already, which is, is this individual dangerous or a flight risk?

And to take the category of crime alone doesn't tell you that. Because if you have someone who's been accused of attempted murder and they attempted to murder someone who lived in their house who was abusing them, if that person is separated from them, they are not necessarily a danger to the rest of the community and we want a judge to look at that. We want a judge to say to the whole person standing in front of them here are all of the things I'm thinking about for community safety.

Now, a charge alone is not going to tell you that, because you can have someone who is charged with trespassing, which sounds sort of minor, but if you're trespassing into a daycare, right, with an intent to do something nefarious, that's totally different. So we can't lump the type of crime into the reform. What we can do is ask that the reform be guided by what will keep our community safe when you look at each individual in front of a judge.

MS. RILEY: Yeah, which also brings up another reason why it's so important to have an attorney at first appearance. You can explain to the judge whatever mitigating circumstances there may be and just, again, provide that insight so that we are making sure that we're getting to the root of the problem in that person's case and not trying to just do a blanket solution.

MR. SKORUP: Can you talk a little bit more specifically about what legislative fixes you're talking about? What is being proposed in Michigan on the table right now? What do we want to specifically change?

MS. RILEY: So there are – there are bills floating around. This is part of a larger conversation where a lot of people are involved because the system involves so many different stakeholders.

So one of the proposed reforms is to convert court rules into statute. So court rules, as Heather mentioned, are sort of like internal operating guidelines for judges that direct them to consider certain factors about an individual in setting bail. And that would – some proposals would make that rule into law.

There's a proposal to do a financial disclosure form so that a defendant on penalty of perjury would disclose to the judge here are my financial resources with an eye toward ensuring that if a judge is going to set bail that they do a bail that that person is able to afford.

And then eliminating interim bail was another one where, again, we're setting some time – some type of maximum maybe on standing bail like that so that when people are picked up on Friday night, you know, those who can, you know, afford it can go free and those who can't don't. But that practice would be, you know, maybe a citation where someone just gets directed to appear in court and rather than having to pay that amount, they're allowed to just receive a ticket and come back – come back to court.

MS. GARRETSON: And we're fortunate in Michigan that we're following a couple of states, so we have good examples of best practices of reform other places.

So Kahryn talked about processes you can put in place to make sure that a defendant's substantive due process rights are followed. There are other places that are setting good examples of detention hearings after someone can't pay their bail. And so we have a lot of evidence that we can expand the reform conversation from what other states have already found to be effective.

MR. SKORUP: Which anarchy states are they?

MS. GARRETSON: Crazy places like Texas.

MR. SKORUP: OK. Very tough, very soft on crime there you might imagine.

MS. GARRETSON: Right.

MR. SKORUP: Yeah, I think my home state of Illinois had passed some major reforms.

MS. RILEY: Yeah, Maryland did a big one, too.

MR. SKORUP: What entities are benefiting economically from the bail system other than the bondsmen?

Kahryn, I know we had a – there was a project at the Mackinac Center, we FOIA-ed all these different jails. You talked about some of the statistics from them, looking at what they

charge and all these. Maybe you can talk about some of the different areas of what they actually charged for and then even some local sheriffs that were very much in favor of reform.

MS. RILEY: So, yeah. So, of course, the bondsmen actually profit because they're taking over this responsibility to ensure that a defendant appears in court. And so I believe it's the U.S. and the Philippines that are the only countries in the world that still allow commercial bondsmen to operate this way. But essentially, the way it works is that if you can afford your bail – and Heather referenced 10 percent, right, which is, like, this portion that the court will often accept or that a bondsman will accept. So I might not be able to come up with a thousand dollars, but if I can come up with a hundred, I might pay that to a bondsman who can then provide this full bill to the court on my behalf, who then assumes the responsibility for ensuring that I make that court date, right, so they're going to really keep a very close eye on you in the meantime. And, of course, the law in the U.S. also allows them to track you down if you flew the jurisdiction and arrest you and bring you back, not law enforcement, but bail jumpers, bail skippers. And so they – so I guess that would be one source of, like, true profit.

And then each county sheriff is required to maintain a jail and one source of revenue for these jails is jail inmate housing fees. There's a statute in Michigan that allows counties to charge jail inmates \$60 per day for the cost of housing them. And the Mackinac Center published some figures on this. Not every county takes advantage of this and not every county who uses jail inmate housing fees charges the full cap, the full \$60 a day. But those that do, you know, have a terrible time collecting from these individuals who, again, you know, tend to be – are more frequently indigent.

And so then, of course, what happens is you're in for 90 days, you come out with, you know, 5,000 dollars) or \$6,000 in fees to the county, you can't pay it, so that goes to collections. And then if you go try to get a job, that debt to the county is going to show up on your background check. So it's just a – just another barrier to successful reentry.

MS. GARRETSON: Right. And this is for people who have not been found guilty of anything.

MS. RILEY: Well, in most places they won't charge you the inmate housing fee unless you're there serving time. So if you're there pretrial, you're not getting charged. But once you're convicted and you're serving time is usually when the housing fee actually kicks in.

MS. GARRETSON: That is a great point. And speaking of costs, we were also talking at lunch about different costs of conditions. Some courts require people who are on pretrial who have not been found guilty of anything to pay their own conditions. So, for instance, if a court makes you get drug tested once a week, even if the crime you're accused of had nothing to do with drugs, and you do that, they can require you to pay for it. And then if you can't pay for it, so you skip, that's considered a violation of your condition and then a warrant goes out for your arrest and you are incarcerated, not because of the original crime, but because you didn't comply with your conditions, which was to pay for your own drug testing.

MS. RILEY: And that's true for ankle monitoring as well. Sometimes in lieu of detaining someone pretrial, if the judge is concerned, they might put a condition of, OK, we're going to monitor you using an ankle bracelet, but you have to pay the company to track you with your ankle bracelet and that can be more than it would have cost to have the bail amount in the first place.

MR. SKORUP: Yeah. And as you can imagine, some of the research on that, the collections rates on those are not very high.

You both kind of similarly described this kind of cycle for people that committed some crime and they need to be punished for it, but they've kind of cycled, they're coming out not serving their time, but also having all this debt and owing money to the bail bondsman and owing money to these collections agencies. Can you – can you talk a little bit about that cycle, what leads people kind of that path? And then what are their hopes going forward?

MS. GARRETSON: So when Kahryn referenced paying a bail bondsman, you never get that money back. So if a judge says you have a \$10,000 bond, we'll take 10 percent, so you owe the court a thousand dollars. You don't have a thousand dollars, so you go to a bail bondsman, you pay the bail bondsman. The money that you pay the bail bondsman, no matter what happens to your charges, never comes back to you.

So there's a woman from the east side of the state that I was working with who put up a bond for her son. And she didn't have the money, so she had some cash, she went to a bail bondsman. Since she didn't have enough cash for the bail bondsman, she gave him what she had and she put her car up as collateral. Her son got out and, which is statistically more likely if you're out, his charges were dropped. So his charges were dropped, the government decided not to pursue him. She still owed the bail bondsman the bill. She continued paying on that bill until she missed a payment. The bail bondsman repossessed her car because that was her collateral. The bail bondsman has her car, her son was never charged with anything. And because it's a debt, right, that she owes to him and she needed her car to work, she lost her job. Right? So we have all of these, like, sort of financial considerations that go into that.

MS. RILEY: Yeah. And you'll hear occasionally, like, you know, if you can't pay the – do the time or pay the fine, don't do the crime. Right? But I think most people, I certainly had no idea all of what kind of goes into this once the train starts to roll. And, of course, you know, when you pay bail to the court, theoretically you get that bail back as long as you show up. But, of course, there are tons of justice system fines and assessments and fees that you may be charged as an outcome of your trial. And your bail amount may be applied to the cost of those fines and fees before whatever portion is left comes back to you.

So it's a lot. And, of course, you know, the justice system fines and fees are more than even the things that we've talked about here. This is all before you even get to trial and then you start getting into administrative fines and fees, the operating expenses of the court and, of course, whatever penal fines are associated with you – with your individual crime.

MR. SKORUP: A couple more questions. What is your opinion regarding marijuana in prison or presumably people in prison because of marijuana. Will legalization or decriminalization help these people?

MS. GARRETSON: So I think Kahryn stated earlier, Michigan doesn't have – I mean, our war on drugs exists, but our people who are behind bars are not as many drug cases as other states. So certainly, when you decriminalize anything, you're going to have less people who are charged with that. So numerically, that would make a difference.

MS. RILEY: Yeah. Yeah, I think that's right. I mean, the bigger issue is sort of, like, regardless of the content matter of the crime, we want to make sure that your financial standing doesn't impact your outcome. Right? Like, you shouldn't have a different outcome – similarly situated defendants, regardless of what the crime was, shouldn't have different outcomes because one is wealthy and one is not.

MR. SKORUP: All right, last question. This is a good one. To what extent were people who committed their first crime aware of the consequences of committing a crime?

MS. RILEY: That's a great question.

MR. SKORUP: You can speak from your personal experience, Kahryn, if you'd like. (Laughter.)

MS. RILEY: Yeah. No, Jarrett is – Jarrett is joking. (Laughter.)

Well, I'll just say that, as I got into this, you know, I came – I came from a two-parent family and they – I had a curfew, right? My parents tracked us down and they made sure that we cracked the books and stayed in school. So kind of learning about what all could have happened to me all too easily could have happened to any of us because of the rate at which – you know, Michigan passes an average of 45 new crimes every year. There are 3,100 statutory crimes on the books in Michigan, right? So, like, I kind of have the Ten Commandments memorized, but after that it starts to get a little fuzzy. Like, there are things that could happen to you, any one of us at any given day. You know, there are these national estimates that the average American unwittingly commits three felonies every day. Right?

So for me, this was something that could just as easily happen to me as to anybody, except that I would have the resources to deal with it and someone else might not. And that's just an unacceptable outcome in the United States, in my opinion.

MS. GARRETSON: What she said.

MR. SKORUP: All right. Great. Please thank our panelists. (Applause.)

So we welcome you. Hang around for a little bit. I'm sure they'll take some more questions. And thanks for making another successful I&I. And go out and learn some more about policy and push for good outcomes. Thank you.

(END)