

MISSISSIPPI'S PRETRIAL PROBLEMS

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INTRODUCTION

Jails in both Mississippi and across the United States are incredibly overcrowded, which has led to extremely deteriorated jail conditions, despite the \$13.6 billion spent on pre-trial detention every year.¹ These conditions are due to the criminalization of poverty through bail amounts, given that many individuals are forced to await their trials while sitting in jail simply because they cannot afford the bail amounts set for them by the court.² This then leads to extremely overcrowded jails throughout the state of Mississippi.³ This has and continues to lead to a multitude of constitutional violations, as individuals who are forced to await their trials while sitting in jail are unable to benefit from the same privileges that those who enjoy their freedom while awaiting their trials benefit from.⁴ If Mississippi were to take bond reform measures and implement a system that utilizes release on one's own personal recognizance for those charged with misdemeanors and non-violent felonies, as various other states and jurisdictions have done, the state of Mississippi would see drastic improvements in jail conditions.⁵

¹ See, e.g., Marsha Thompson, *Hinds County Has 15 Days to Solve Jail Overcrowding Problems*, WLBT (Oct. 22, 2013, 8:41 PM), <https://www.wlbt.com/story/23760862/detainees-packed-in-like-sardines-at-hinds-co-facility/> [https://perma.cc/DCD3-HKZ9]; *Mississippi Profile*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/profiles/MS.html> [https://perma.cc/AC78-H3ZD] (last visited Apr. 21, 2025); *Pretrial Detention*, PRISON POL'Y INITIATIVE, https://www.prisonpolicy.org/research/pretrial_detention [https://perma.cc/TY4Q-7XTA] (last visited Apr. 21, 2025) ("On any given day, this country has 451,000 people behind bars who are being detained pretrial... It costs local governments nationwide: \$13.6 billion.").

² *What is the Difference Between a Secured and Unsecured Bond?*, BEEHIVE BAIL BONDS (May 29, 2013), <http://beehivebailbonds.blogspot.com/2013/05/what-is-difference-between-secured-and.html> [https://perma.cc/BQ84-H7QS].

³ See *Mississippi Profile*, *supra* note 1; Thompson, *supra* note 1.

⁴ See Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 722 (2017).

⁵ See Sandra Susan Smith & Isabella Jorgensen, *It's Time for Mass. to Eliminate Cash Bail*, COMMONWEALTH BEACON (Apr. 30, 2022), <https://commonwealthmagazine.org/opinion/its-time-for-mass-to-eliminate-cash-bail/> [https://perma.cc/UST6-NWBK] (advocating for such a system in Massachusetts).

There has been extensive scholarship published on the issue of the criminal justice system's criminalization of poverty. For example, some scholars look at how fees and fines operate to criminalize poverty.⁶ Looking at this issue from a national standpoint, Kiren Jahangeer argues that fees and fines in the criminal justice system operate to criminalize poverty.⁷ Fees and fines are imposed following conviction, with fines being "monetary sanctions for infractions, misdemeanors, or felonies," and fees being "itemized payments for court activities, supervision or incarceration . . . charged to defendants determined guilty of infractions, misdemeanors or felonies."⁸ Malia N. Brink also argues that fines and fees operate to criminalize poverty, focusing on the American Bar Association's efforts to combat such an effect. She explains that "the alarming results [of imposing excessive fines and fees], including jail time for unpaid fines and fees, have effectively criminalized poverty and eroded public confidence in the justice system."⁹ As far as the American Bar Association's efforts to combat this criminalization of poverty, the Ten Guidelines on Court Fines and Fees were developed and adopted with the purpose of ensuring "that fines and fees are fairly imposed and administered and that the justice system does not punish people for the 'crime' of impoverishment"¹⁰ Meanwhile, other scholarship focuses on the criminalization through bond amounts.¹¹ Lauren Bennett draws the connection between the criminalization of poverty and the current cash bond system in the American criminal justice system, arguing that such a system is a violation of the Eighth Amendment to the United States Constitution.¹²

⁶ See generally Malia N. Brink, *ABA Efforts to Combat the Criminalization of Poverty*, 48 HUM. RTS. 10 (2023); see also Kiren Jahangeer, *Fees and Fines: The Criminalization of Poverty*, 38 NO. 5 GPSOLO 59, 59 (2021).

⁷ See generally Jahangeer, *supra* note 6.

⁸ *Id.*

⁹ See generally Brink, *supra* note 6.

¹⁰ *Id.* at 10.

¹¹ See generally Lauren Bennett, *Punishing Poverty: Robinson and the Criminal Cash Bond System*, 25 WASH. & LEE J. CIV. RTS. & SOC. JUST. 315 (2019).

¹² *Id.* at 319-29.

Unlike previous scholarship that focuses on the criminalization of poverty from a national standpoint, this paper will focus primarily on the state of Mississippi, exploring the current state of jails in Mississippi, the role that bail amounts play in their conditions, and the various constitutional violations that occur when individuals are forced to remain in jail because they cannot afford their bail amounts. This paper intends to prove that bond amounts work to criminalize poverty, leading to a variety of constitutional violations that impact those of the lowest socioeconomic status. This paper begins with providing general information regarding bail and the detention rates throughout both the United States as a whole and Mississippi. This paper then lays out the intended purposes of the pretrial system and explains the problem that Mississippi is facing by analyzing the constitutional, statutory, and case law protections that individuals within the state have. Then, the argument concerning bail amounts is explained, analyzing their connection to the equal application of justice and criminalization of poverty. Then, the lack of cost justifications to pretrial detention and models of bond reform, are explained. This paper will propose and dismiss various arguments that critics to bond reform often raise and any political pushback concerns. This paper will end with proposing an approach to bond reform for Mississippi to undertake.

I. SYSTEM BACKGROUND

A. *Bail*

Essentially, “[b]ail is defined as the temporary release of an arrested individual that is secured by a monetary payment and is contingent upon appearance at future court hearings.”¹³ In Mississippi, bail is usually set at the individual’s initial appearance, which typically occurs within twenty-four to forty-eight hours of the individual being arrested.¹⁴ “Once bail is set, detention status depends on a defendant’s ability and willingness to pay bail.”¹⁵

¹³ Wendy R. Calaway & Jennifer M. Kinsley, *Rethinking Bail Reform*, 52 U. RICH. L. REV. 795, 797 (2018).

¹⁴ MISS. R. CRIM. P. 5.1(b)(3).

¹⁵ Heaton et al., *supra* note 4, at 721.

There are different types of bail in the criminal justice system.¹⁶ Two types of bonds that an individual may receive include a secured bond and an unsecured bond.¹⁷ An unsecured bond is defined as “an undertaking to pay a specified sum of money to the clerk of the circuit, county, justice, or municipal court, for the use of the state of Mississippi or the municipality, on the failure of a person released to comply with its conditions.”¹⁸ Meanwhile, a secured bond is defined as “an appearance bond secured by deposit with the clerk of security equal to the full amount thereof.”¹⁹ An individual who receives a secured bond must put up a monetary amount or collateral equivalent set by the court to be released from jail.²⁰ Typically, a bail bondsman maintains the status of a middleman throughout the bond process, “posting the refundable bail deposit in exchange for a nonrefundable fee”²¹ Usually, this nonrefundable fee is about ten percent of the total bond amount.²² Therefore, if the individual cannot afford to put up this set bond amount, then they must await their trial while sitting behind bars.²³ If, upon release, the individual does not appear in court, then the individual will retroactively owe the court the full amount for their failure to appear.²⁴

However, with an unsecured bond, the individual does not actually have to pay a bail amount to be released from jail.²⁵ Instead, the individual signs an unsecured bond, which can best be described as a contractual promise to appear in court.²⁶ If the individual fails to appear in court, then the individual will then retroactively owe the unsecured bond amount to the court.²⁷ However, if the individual does appear, then the individual does not

¹⁶ See generally MISS. R. CRIM. P. 8.1.

¹⁷ *Id.*

¹⁸ MISS. R. CRIM. P. 8.1(b).

¹⁹ MISS. R. CRIM. P. 8.1(c).

²⁰ *What is the Difference Between a Secured and Unsecured Bond?*, *supra* note 2.

²¹ Heaton et al., *supra* note 4, at 721.

²² *Id.*

²³ *Id.*

²⁴ MISS. R. CRIM. P. 8.1(b).

²⁵ *Id.* An unsecured bond is an “undertaking to pay a specified sum of money to the clerk of the circuit, county, justice, or municipal court. . . on the failure of a person released to comply with its conditions.” *Id.* (emphasis added).

²⁶ MISS. R. CRIM. P. 8.1(d)(5)-(6).

²⁷ *Id.*

owe the court a monetary amount.²⁸ Meanwhile, being released on one's personal recognizance means that the individual simply signs a promise to reappear in court.²⁹ Therefore, the individual does not have to pay a set bail amount to the court to be released from jail, nor does the individual face a monetary penalty for any failure to reappear in the future.³⁰

Monetary bail is not a new concept in the criminal justice system.³¹ Instead, it has been around for quite some time.³² In fact, "monetary bail is an ancient criminal justice tradition rooted in Anglo-Saxon history."³³ Most scholars conclude that the concept of bail first emerged at some point in medieval England, originating to achieve two goals, protect the public and ensure that individuals would appear back in court upon being released from jail.³⁴ However, monetary bail does not necessarily work to achieve these goals.

B. United States

Looking at the United States as a whole, approximately 2.2 million people are sitting in jail on any given night.³⁵ More than 400,000 people in the United States are currently detained in jail while awaiting their trials.³⁶ Throughout the United States, incarceration spending has dramatically increased over the last several decades, with most of this money being spent on incarcerating individuals who are awaiting their trials and have

²⁸ *Id.*

²⁹ *What Does It Mean To Be Released On Your Own Recognizance*, ABOUTBAIL, <https://www.aboutbail.com/pages/what-does-it-mean-to-be-released-on-your-own-recognizance> [<https://perma.cc/P2VZ-WL2Z>] (last visited Apr. 21, 2025); *see also* MISS. R. CRIM. P. 8.1(a) ("A release on defendant's 'personal recognizance' means release without any condition relating to, or a deposit of, security.").

³⁰ *Id.*

³¹ Calaway & Kinsley, *supra* note 13, at 797.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Thea L. Sebastian and Alec Karakatsanis, *Challenging Money Bail in the Courts*, 57 JUDGES' J. 23 (2018).

³⁶ *Pretrial Detention*, *supra* note 1.

not been before a court to determine their guilt or innocence.³⁷ Therefore, even from an economic standpoint, pretrial detention is a pressing issue. Further, the pretrial treatment of individuals in the American criminal justice system has been called one of the most important issues.³⁸ This is because “the policies and practices around pretrial detention have contributed to the country’s mass incarceration numbers; created a crisis for local jail management; generated unsustainable budgets; and raised important questions about race, class, and the constitutional implications of incarcerating people because they are too poor to pay a bail amount.”³⁹

C. Mississippi

Including prisons, jails, immigration detention, and juvenile justice facilities, Mississippi’s incarceration rate is 1,020 people per 100,000 people, making Mississippi the world’s leader in putting people behind bars.⁴⁰ Mississippi has more inmates per capita than any state or nation in the entire world.⁴¹ In fact, Mississippi’s incarceration rate is a whole 85 percent higher than the United States’s national average.⁴² Turning to jails, approximately 84,000 people are booked into jails in Mississippi each year.⁴³ Since 1990, Mississippi’s population of those sitting jail while awaiting their trials has more than tripled.⁴⁴ Essentially, “while statewide offense data is not available for jail populations in Mississippi, in most states, the vast majority of people jailed pretrial have been charged with low-level misdemeanors and non-violent felonies, and they are

³⁷ Shima Baughman, *Costs of Pretrial Detention*, 97 B. U. L. REV. 1, 1-3 (2017), <https://www.bu.edu/bulawreview/files/2017/03/BAUGHMAN.pdf> [https://perma.cc/2GF2-QZ8G].

³⁸ Calaway & Kinsley, *supra* note 13, at 1.

³⁹ *Id.*

⁴⁰ PRISON POL’Y INITIATIVE, *supra* note 1.

⁴¹ Jerry Mitchell, ‘Foolishly Sticking with Failed System’: Mississippi Leads the World in Mass Incarceration, CLARION LEDGER (Aug. 13, 2022, 10:18 AM), <https://www.clarionledger.com/story/news/2022/08/13/mississippi-has-more-inmates-per-capita-than-any-state-nation/10317601002/> [https://perma.cc/S4QG-CTZ8].

⁴² *High Cost, Low Return: Mississippi’s Ongoing Incarceration Crisis*, FWD.US (Nov. 2, 2022), <https://www.fwd.us/news/mississippis-ongoing-incarceration-crisis/> [https://perma.cc/T2SS-9HEB].

⁴³ PRISON POL’Y INITIATIVE, *supra* note 1.

⁴⁴ *Id.*

incarcerated because they cannot afford cash bail.”⁴⁵ In 2018, 54% of individuals sitting in Mississippi jails had yet to be convicted of the crime or crimes on which they were being held.⁴⁶

It appears as if Mississippi’s incarceration problem is not going anywhere anytime soon, so long as positive steps to alleviate the state’s incarceration problem are not made. These staggering and appalling statistics show us that mass incarceration and overcrowding in Mississippi jails are huge issues within the state. Mississippi is in desperate need of some sort of reform to alleviate these issues and the problems that come along with them. The overcrowding of Mississippi jails has also produced additional problems. In 2020, in just a single week, five individuals being held in Mississippi jails died at the hands of other inmates.⁴⁷

The Hinds County Detention Center is an example of a severely overcrowded Mississippi jail.⁴⁸ Deteriorated conditions, especially overcrowding, at the Hinds County Detention Center have been a longstanding issue. In 2013, living space for those being held in the Hinds County Detention Center was eight feet per individual, while fifty feet per individual is the usual standard for living space in jails.⁴⁹ Photos of detainees physically piled into holding tanks evidence such poor and, arguably, inhumane conditions.⁵⁰ This certainly not only leads to concerns about the conditions within the jail itself, but also potentially brings about claims of human rights violations as detainees are forced to endure such terrible conditions. These overcrowded conditions in 2013 led law enforcement officials to have to begin field releasing some offenders to avoid booking them into jail and increasing the jail’s

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Mississippi Inmate Deaths Expose a Corrections System in Crisis*, PBS NEWS (Jan. 10, 2020, 6:40 PM), <https://www.pbs.org/newshour/show/mississippi-inmate-deaths-expose-a-corrections-system-in-crisis> [<https://perma.cc/D4JN-2DM7>].

⁴⁸ Marie Mennefield, *Hinds County Supervisors Discuss Solutions for Detention Center*, WJTV 12 NEWS (June 5, 2023, 12:25 PM), <https://www.wjtv.com/news/local-news/hinds-county-supervisors-discuss-solutions-for-detention-center/> [<https://perma.cc/9SP8-WDYS>].

⁴⁹ Thompson, *supra* note 1.

⁵⁰ *Id.*

population.⁵¹ While this might appear to be shocking to some individuals, in Hinds County, this appears to be the norm. As recently as 2022, the Department of Justice argued that a federal takeover of the Hinds County Detention Center was appropriate given its conditions.⁵² Under such a federal takeover, the Hinds County Detention Center would “be placed under receivership to ensure compliance under a federal consent decree.”⁵³ This federal consent decree was imposed on the Hinds County Detention Center in 2016 in response to unconstitutional conditions, “which included staffing shortages and security issues, including cell doors that [do not] lock.”⁵⁴ All in all, jails throughout the state of Mississippi and the individuals being held in these jails are in desperate need of some form of relief.

D. Intended Purposes of the Pretrial System

Essentially, “the [United States] pretrial system is meant to allow all but the most dangerous criminal suspects to be released from custody while they await trial.”⁵⁵ Given what is set forth in the Eighth Amendment of the United States Constitution, “the importance of release is grounded in the presumption of innocence, an axiomatic and elementary right designed to protect defendants before any finding of guilt.”⁵⁶

⁵¹ *Overcrowded Jails Force Police to Release Suspects*, WAPT 16 ABC (Jan. 3, 2013, 11:24 PM), <https://www.wapt.com/article/overcrowded-jails-force-police-to-release-suspects/2082560> [<https://perma.cc/TQ7U-298T>].

⁵² Mina Corpuz, *The Hinds County Jail Could Face Federal Takeover. What Does That Mean, What Would Change?*, CLARION LEDGER (Feb. 11, 2022, 9:00 PM), <https://www.clarionledger.com/story/news/2022/02/12/what-know-ahead-hearing-future-hinds-county-jail-federal-takeover/6719549001/> [<https://perma.cc/C7D7-R7ZG>].

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Will Dobbie & Crystal Yang, *The Economic Costs of Pretrial Detention*, BROOKINGS PAPERS ON ECON. ACTIVITY (2021), <https://www-jstor-org.umiss.idm.oclc.org/stable/pdf/27093828.pdf> [<https://perma.cc/TJX8-WKQ5>].

⁵⁶ *Id.* at 255.

While the presumption of innocence is not explicitly provided for in the United States Constitution, it is recognized as a basic, fundamental principle of a fair trial in the United States.⁵⁷ *Coffin v. United States* is a case in which the Supreme Court does just that.⁵⁸ Further, the presumption of innocence until proven guilty is recognized as a due process right under the Fifth Amendment to the United States Constitution, which states that “no person shall be . . . deprived of life, liberty, or property, without due process of law.”⁵⁹ Given that the individuals sitting in jail while awaiting their trials are considered to be legally innocent, it appears that the American legal system’s practice of holding them in jail because they cannot pay their bail punishes them for simply being poor. It is generally understood that pretrial detention is meant to be reserved for those that are considered by the court to be dangerous to other members of society. However, despite these purposes of the pretrial system, individuals in Mississippi are being detained while awaiting their trials at staggering rates.⁶⁰ Meanwhile, many of these individuals are likely charged with misdemeanors and non-violent offenses.⁶¹

II. PROBLEM

When it comes to bail, individuals in Mississippi have several protections, spanning from Mississippi case law to the United States Constitution. With these protections, one might assume that pre-trial detention in Mississippi would not be an issue. However, this is far from reality in the state of Mississippi.⁶² Despite these protections, many individuals remain in Mississippi jails while awaiting their trials, being forced to endure the impacts of being detained leading up to one’s trial.⁶³ Meanwhile, wealthier individuals, who are charged with the same offense or offenses, are

⁵⁷ *Coffin v. United States*, 156 U.S. 432, 453 (1895) (“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.”).

⁵⁸ *Id.*

⁵⁹ U.S. CONST. amend. V.

⁶⁰ *High Cost, Low Return: Mississippi’s Ongoing Incarceration Crisis*, *supra* note 42.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *C.f.* Heaton et al., *supra* note 4, at 722.

able to bail out of jail and enjoy all the privileges that come with being able to do so.⁶⁴ The protections that individuals in Mississippi have when it comes to bail are as followed.

A. United States Constitution

The United States Constitution lays out some protections for individuals in the pretrial process. The Eighth Amendment to the United States Constitution provides that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”⁶⁵ Therefore, under the United States Constitution, individuals are constitutionally protected against excessive bail.⁶⁶ In *Stack v. Boyle*, the Supreme Court expands on the Eighth Amendment’s protection against excessive bail.⁶⁷ In this case, bail was fixed for each petitioner at \$50,000 each.⁶⁸ Subsequently, the petitioners “moved to reduce bail on the ground that bail as fixed was excessive under the Eighth Amendment.”⁶⁹ The Supreme Court held that:

the right to release before trial is conditioned upon the accused’s giving adequate assurance that he will stand trial and submit to sentence if found guilty. . . . Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is “excessive” under the Eighth Amendment.⁷⁰

⁶⁴ *Id.*

⁶⁵ U.S. CONST. amend. VIII.

⁶⁶ *Id.*; see also Calaway & Kinsley, *supra* note 13, at 800 (“While the United States Constitution does not guarantee a right to bail, the Eighth Amendment prohibits ‘[e]xcessive’ bail.”).

⁶⁷ *Stack v. Boyle*, 342 U.S. 1, 5 (1951).

⁶⁸ *Id.* at 3.

⁶⁹ *Id.*

⁷⁰ *Id.* at 5.

The Fourteenth Amendment to the United States Constitution provides that:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.⁷¹

Therefore, the Equal Protection and Due Processes Clauses of the Fourteenth Amendment both provide individuals within the criminal justice system with protections. In *M.L.B. v. S.L.J.*, M.L.B. filed an appeal of the decree terminating her rights to her children.⁷² However, “Mississippi law conditioned her right to appeal on prepayment of record preparation fees”⁷³ The Supreme Court held that, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, Mississippi “may not deny M.L.B., because of her poverty, appellate review of the sufficiency of the evidence on which the trial court based its parental termination decree.”⁷⁴ In other words, it was unconstitutional to deny M.L.B. appellate review simply because of her poverty.⁷⁵ This was, ultimately, in violation of her rights to both due process and equal protection.⁷⁶

⁷¹ U.S. CONST. amend. XIV, § 1.

⁷² *M.L.B. v. S.L.J.*, 519 U.S. 102, 102 (1996).

⁷³ *Id.*

⁷⁴ *Id.* at 107.

⁷⁵ *Id.*

⁷⁶ *Id.* at 120, 124.

B. Rules

Individuals in the pretrial process in Mississippi can also find protections in the Mississippi Rules of Criminal Procedure. Pursuant to the Mississippi Rules of Criminal Procedure 8.2:

Any defendant charged with an offense bailable as a matter of right shall be released pending or during trial on the defendant's personal recognizance or on an appearance bond unless the court before which the charge is filed or pending determines that such a release will not reasonably assure the defendant's appearance as required, or that the defendant's being at large will pose a real and present danger to others or to the public at large.⁷⁷

Given the language of Rule 8.2, it appears as if release is generally the rule, and bail is the exception. However, this is certainly not what always occurs in practice. Rule 8.2 allows judges to use their own discretion in setting bond amounts, providing them with a set of bond guidelines that they may use when setting bond for individuals.⁷⁸ Notably, Rule 8.2(a)(15) provides that, in setting bond, the court shall consider "any other fact or circumstance bearing on the risk of nonappearance or on the danger to others or to the public."⁷⁹ This provision certainly provides judges with a vast amount of leeway in setting bond amounts. Therefore, while it might appear as if release is the rule and bail is the exception, it is not as simple as that in practice.

⁷⁷ MISS. R. CRIM. P. 8.2(a).

⁷⁸ MISS. R. CRIM. P. 8.2(c).

⁷⁹ MISS. R. CRIM. P. 8.2(a)(15).

C. Mississippi Constitution

Next, the Mississippi Constitution also offers protection for individuals in the pretrial process. Article 3, Section 29 of the Mississippi Constitution provides that:

Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except for capitol offenses (a) when the proof is evident or presumption great; or (b) when the person has previously been convicted of a capital offense or any other offense punishable by imprisonment for a maximum of twenty (20) years or more.⁸⁰

Therefore, under the plain text of the Mississippi Constitution, excessive bail is prohibited.

D. Case Law

Lastly, there is also case law that, arguably, attempts to provide protections for individuals in the state of Mississippi when it comes to bail. In *Shook v. State*, the Mississippi Supreme Court set forth the factors for judges to consider when setting an individual's bail.⁸¹ These factors are:

(1) [t]he length of his residence in the community; (2) [h]is employment status and history and his financial condition; (3) [h]is family ties and relationships; (4) [h]is reputation, character, and mental condition; (5) [h]is prior criminal record, including any record of prior release on recognizance or on bail; (6) [t]he identity of responsible members of the community who would vouch for defendant's reliability; (7) [t]he nature of the offense charged and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of non-appearance; and (8) [a]ny other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.⁸²

⁸⁰ MISS. CONST. of 1890, art. 3, § 29.

⁸¹ *Shook v. State*, 511 So. 2d 1386, 1387 (Miss. 1987).

⁸² *Id.* (quoting *Lee v. Lawson*, 375 So. 2d 1019, 1024 (Miss. 1979)).

In Mississippi, when judges are determining what an individual's bond amount should be, judges consider these factors. The eighth factor set forth by the court, which states that judges should consider "any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear,"⁸³ provides judges with significant leeway and allows them to consider virtually anything when setting an individual's bond. Therefore, it is almost as if a set list of factors for judges to consider has little to no impact when judges can virtually consider anything that they please when setting bond under the eighth factor.⁸⁴

However, despite the protections described above, jails in Mississippi remain heavily overcrowded, with many individuals sitting in jail, charged with non-violent offenses, and being held on bonds that they cannot afford.⁸⁵ This leads to the criminalization of poverty. Many people are being forced to await their trials in jail because they cannot afford their bond amounts, while wealthier individuals are able to enjoy their freedom while awaiting their trials.⁸⁶

III. ARGUMENT

The severely overcrowded conditions in Mississippi jails are, arguably, due to the criminalization of poverty through bond amounts. Despite the protections discussed above, jails in Mississippi remain extremely crowded.⁸⁷ Those in poverty are sitting in jail, while wealthier individuals are often able to bond out of jail.⁸⁸ This leads to a multitude of constitutional violations.⁸⁹ Other states who have implemented bond reform legislation have some of the lowest incarceration rates in the country.⁹⁰ Bond reform might just be the solution to the severely overcrowded conditions in Mississippi jails. Mississippi should adopt the Equal Protection Model to bond reform, eliminating bond for misdemeanors and non-

⁸³ *Id.*

⁸⁴ *Id.*; see also MISS. R. CRIM. P. 8.2(a)(15).

⁸⁵ *High Cost, Low Return: Mississippi's Ongoing Incarceration Crisis*, *supra* note 42.

⁸⁶ See Heaton et al., *supra* note 4, at 714.

⁸⁷ *High Cost, Low Return: Mississippi's Ongoing Incarceration Crisis*, *supra* note 42.

⁸⁸ See Heaton et al., *supra* note 4, at 714.

⁸⁹ *Id.* at 722.

⁹⁰ Smith & Jorgensen, *supra* note 5.

violent felony offenses.⁹¹ This would likely result in a drastic decrease in the state's jail population and help to alleviate many of the issues that are seen through the pretrial detention of individuals.

A. Equal Application of Justice

There are also issues when it comes to the general equal application of justice and pretrial detention. The Fourteenth Amendment to the United States Constitution provides, in relevant part, that:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens in the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any within its jurisdiction the equal protection of the laws.⁹²

An argument can be made that detaining individuals prior to their trial solely because they cannot afford to bond out of jail violates the Equal Protection and Due Processes Clauses of the Fourteenth Amendment. For example, it has been shown that the pretrial detention of an individual while awaiting their trial increases that individual's likelihood of conviction at trial.⁹³ In other words, those who are detained while awaiting their trials are more likely to be convicted of the crimes that they are accused of than those who are not detained while awaiting their trials.⁹⁴ They are, effectively, "hindered in [their] ability to gather evidence, contact witnesses, or otherwise prepare [their] defense."⁹⁵ This certainly appears to be a clear constitutional violation. However, this is not the only adverse effect that pretrial detention has the possibility to have on a defendant's case outcome.⁹⁶ Individuals detained leading up to their trials "might experience worse outcomes because they (1) have increased incentives to plead guilty, including potentially overwhelming incentives; (2) cannot

⁹¹ Brandon L. Garrett, *Models of Bail Reform*, 74 FLA. L. REV. 879, 916-18 (2022).

⁹² U.S. CONST. amend. XIV.

⁹³ Alexander Bunin, *The Demise of Money Bail*, 33 CRIM. JUST. 11, 11 (2018).

⁹⁴ *Id.*

⁹⁵ *Barker v. Wingo*, 407 U.S. 514, 533 (1972).

⁹⁶ Heaton et al., *supra* note 4, at 722.

effectively prepare a defense; (3) have reduced financial resources for their defense; (4) cannot demonstrate positive behavior; (5) cannot obstruct the prosecution; and (6) lack the advantage of long delay.”⁹⁷ Essentially, detention can create numerous challenges that may lead to an unjust outcome:

Detention alters the incentives for fighting a charge. A detained defendant generally has less to lose by pleading guilty; detention may have already caused major disruption to her life. And whereas for a released defendant the prospect of a criminal sentence—custodial or otherwise—represents a serious loss of liberty, for a detainee it is, at worst, an extension of the status quo. A second possible mechanism is that detention may limit the ability of the accused to develop a defense by working with his attorney or collecting relevant evidence. Relatedly, detention might limit the financial resources a person has to dedicate to her defense (if, for instance, detention results in loss of wages). Fourth, detention prevents an accused person from engaging in commendable behavior that might mitigate her sentence or increase the likelihood of acquittal, dismissal, or diversion. Such foreclosed conduct includes paying restitution, seeking drug or mental health treatment, and demonstrating commitment to educational or professional advancement. Fifth, detention might prevent the accused from engaging in reprehensible behaviors that have similar effects on the case outcome, like intimidating witnesses, destroying evidence, or engaging in bad-faith delay tactics. Finally, even if released defendants do not actively seek to delay adjudication, it may be the case that they have better outcomes simply because their cases move more slowly, which entails some inevitable degradation of evidence.⁹⁸

Ultimately, those who cannot afford their bails set by the court are being deprived of life, liberty, and property, without due process of law, because they are forced to sit and await their trials in jail.⁹⁹ Those who cannot afford their bails are also denied equal protection of the laws, considering that wealthier individuals are able to bail

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

out of jail while those in poverty often are unable to bail out of jail.¹⁰⁰ Therefore, the same laws are having different impacts based on economic status. It is also certainly arguable that cash bail itself is unconstitutional, given that poor individuals are often detained and, subsequently, deprived of their liberty before trial due to their inability to afford to pay the bail set by the court. In fact, in 2019, an amicus brief was filed in the case of *Daves v. Dallas County* in the Fifth Circuit U.S. Court of Appeals.¹⁰¹ In this case, the constitutionality of cash bail was being challenged.¹⁰² Essentially, this brief supported the notion that “detaining poor people before trial based solely on their inability to pay pre-determined money bail in Dallas County, Texas, while those who are able to pay go free, violates equal protection and due process rights guaranteed by the U.S. Constitution.”¹⁰³

B. Criminalization of Poverty

In the way that bails amounts impact individuals’ rights to due process and the equal protection of the laws, bail amounts operate to criminalize poverty.¹⁰⁴ To put it simply, wealthier individuals are often able to bail out of jail while awaiting their trials, while those in poverty are often unable to do so, essentially being forced to sit in jail until the resolution of the charges against them. Therefore, those in poverty are forced to endure the negative effects of pretrial detention, while wealthier individuals enjoy all of the privileges that come with preparing for their trials as free individuals. In short, the American criminal legal system punishes people simply for being poor.

¹⁰⁰ *Id.* at 769-70.

¹⁰¹ *More than 80 Current and Former Prosecutors and Law Enforcement Leaders Call for Bail Reform in Legal Filing*, GEO. L. (Jan. 30, 2019), <https://www.law.georgetown.edu/icap/our-press-releases/more-than-80-current-and-former-prosecutors-and-law-enforcement-leaders-call-for-bail-reform-in-legal-filing/> [https://perma.cc/V4XB-ME39].

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Bennett, *supra* note 11, at 319.

In *Robinson v. California*, the United States Supreme Court struck down a California statute that made it illegal to be addicted to narcotics.¹⁰⁵ An officer encountered an individual who appeared to have scar tissue on his arms.¹⁰⁶ This individual then admitted to the occasional use of narcotics.¹⁰⁷ The police officer arrested the individual, whom was then charged under the California statute that made it illegal to be addicted to narcotics.¹⁰⁸ However, the court held that this statute was unconstitutional, given that it criminalized a status.¹⁰⁹ The Court reasoned that “a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the state or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment.”¹¹⁰ This case highlights the unconstitutionality of criminalizing a status,¹¹¹ as in the way that bail seems to criminalize poverty. Essentially, many individuals are sitting in jail throughout the state of Mississippi while awaiting their trials and being held on a bail that they cannot afford.¹¹² Meanwhile, wealthier individuals can bail out of jail while awaiting their trials.¹¹³ The common denominator here is economic status, with poverty being the status that is criminalized by bail amounts. Individuals in poverty are often forced to await their trials while sitting in jail simply because they cannot afford their bail amounts.¹¹⁴ In this way, bail appears to criminalize poverty in the same way that the California statute operated to criminalize the status of being a drug addict.¹¹⁵

¹⁰⁵ *Robinson v. California*, 370 U.S. 660 (1962).

¹⁰⁶ *Id.* at 661.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 667.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 661.

¹¹² *High Cost, Low Return: Mississippi's Ongoing Incarceration Crisis*, *supra* note 42.

¹¹³ Heaton et al., *supra* note 4, at 714.

¹¹⁴ *Id.*

¹¹⁵ *See Robinson*, 370 U.S. at 661.

It is important to note that *Powell v. Texas* is a United States Supreme Court case that seems to limit the reach of *Robinson*, given that the court did not extend the holding in *Robinson* to a Texas statute that criminalized public intoxication.¹¹⁶ However, there is a clear difference between poverty and being intoxicated in public, given that being intoxicated in public is not a status in the same way that poverty is. Poverty seems to be more akin to the status of that in *Robinson* than that in *Powell*.

C. No Cost Justifications to Pretrial Detention

In Mississippi, each year, the state spends approximately \$90 million on incarcerating individuals awaiting their trials.¹¹⁷ Given that Mississippi is the world's leader in putting people behind bars¹¹⁸, it is not surprising and could even be assumed that the state would spend a significant amount of taxpayer dollars on pretrial detention. When it comes to the cost justifications for the pretrial detention of individuals, there appear to be little to none. Essentially:

When a judge chooses to detain an individual, that individual bears direct costs and inconvenience associated with detention. The detainee's family, employer, government, and the detention center bear costs as well Conversely, when a judge chooses to release a defendant prior to trial, she subjects the public to costs with the release—primarily in the form of defendants who may commit further crimes.¹¹⁹

However, research has been done to suggest that jurisdictions that undertake bond reform measures do not see an increase in crime.¹²⁰ Therefore, there seems to be no real weight behind the argument that the public is subjected to the cost of the defendant committing further crimes if said defendant is released from jail while awaiting trial. Ultimately, given the staggering amount of

¹¹⁶ *Powell v. Texas*, 392 U.S. 514, 536-37 (1968).

¹¹⁷ *High Cost, Low Return: Mississippi's Ongoing Incarceration Crisis*, *supra* note 42.

¹¹⁸ Mitchell, *supra* note 41.

¹¹⁹ Baughman, *supra* note 37, at 1 (footnotes omitted).

¹²⁰ Allie Preston & Rachael Eisenberg, *Cash Bail Reform Is Not a Threat to Public Safety*, CTR. FOR AM. PROGRESS (Sep. 19, 2022), <https://www.americanprogress.org/article/cash-bail-reform-is-not-a-threat-to-public-safety/> [https://perma.cc/HGG5-5GNZ].

taxpayer dollars that Mississippi spends on pretrial detention each year, there seem to be little to no cost justifications to detaining individuals while they are awaiting their trials.

D. Models of Bond Reform

Many jurisdictions engage in some form of bond reform to attempt to alleviate some of the issues that arise when a jurisdiction imposes monetary bail on individuals. There are various models of bond reform, including the Procedural Due Process Model, Risk Assessment Model, Categorical Model, Community Support Model, Equal Protection Model, and Alternatives to Arrest Model.¹²¹

1. Procedural Due Process Model

The Procedural Due Process Model is a three-part cost-benefit test.¹²² This test “asks that the court balance: (1) the private interest affected by official action; (2) the risk of erroneous deprivation of that interest through procedures used as compared to any substitute procedures; and (3) the government’s interests and costs of any additional procedures.”¹²³ The Procedural Due Process Model “focuses on procedural compliance as a remedy for a cash bail system in which traditional rigid cash bail schedules operated on individuals irrespective of their ability to pay or the risk they posed.”¹²⁴ There are several limitations to this model, a couple of which seem most likely to impact a state like Mississippi.¹²⁵ First, “bail officer compliance with new procedures can be highly inconsistent” given that “there may be limited public access to bail hearings, often conducted physically inside a jail facility without a recording or record of what transpired, and it may be difficult to ascertain whether judicial officers are following the required hearings process as a result.”¹²⁶ Further, “this approach may face practical challenges in rural jurisdictions where pretrial

¹²¹ Garrett, *supra* note 9291, at 880.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 902.

¹²⁶ *Id.*

hearings cannot be promptly conducted, resulting in further delays and pretrial detention of individuals waiting for a hearing.”¹²⁷

2. Risk Assessment Model

Some scholars have deemed the current era as the “third wave” of bond reform.¹²⁸ This is a movement in which jurisdictions are adopting the Risk Assessment Model to bond reform and seeking “to end a system of ingrained, institutionalized wealth-based incarceration.”¹²⁹ However, instead of the type of bond reform that actually has a material impact on pre-trial detention rates, what has been deemed the “third wave” of bond reform only has a marginal affect, if at all, on pretrial detention rates.¹³⁰ This type of bond reform is known as the Risk Assessment Model and bases release decisions “on an empirical assessment of an individual defendant’s risk level.”¹³¹

3. Categorical Model

An additional model of bond reform is known as the Categorical Model. Essentially, “in a categorical model, the law designates individuals or categories of individuals who are presumptively detained or released pretrial.”¹³² Under this model, individuals are either released or detained based on the category that they fall into.¹³³ These categories are organized according to the charge or charges that individuals are arrested under.¹³⁴ There are limitations to this model.¹³⁵ This model “is reducing the individual, case specific information” and merely focuses on arrest

¹²⁷ *Id.* at 903.

¹²⁸ Alexa Van Brunt & Locke E. Bowman, *Toward a Just Model of Pretrial Release: A History of Bail Reform and a Prescription for What’s Next*, 108 J. CRIM. L. & CRIMINOLOGY 701, 703 (2018) <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7640&context=jclc> [<https://perma.cc/KWJ4-DAFS>].

¹²⁹ *Id.*

¹³⁰ *Id.* at 753.

¹³¹ *Id.*

¹³² Garrett, *supra* note 91, at 910.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 913.

charges.¹³⁶ It also provides prosecutors with an incentive to merely upcharge the individuals that they hope will be detained leading up to their trials.¹³⁷

4. Community Support Model

There is also the Community Support Model to bond reform. This model emphasizes “providing social services to improve pretrial outcomes. Such a model may require pretrial services, including a pretrial services agency, to provide such support.”¹³⁸ For example, Washington D.C. created a pretrial services agency.¹³⁹ Essentially, “the agency’s Social Services and Assessment Center is not simply a referral agency—it provides comprehensive mental health and substance abuse treatment services.”¹⁴⁰ Therefore, the Community Support Model delves into the underlying issues present in a community, looking to provide remedies for what might be causing crime instead of simply blindly punishing the crime. The issue with this model is the additional resources required to fund such services.¹⁴¹ Given that Mississippi is the poorest state in the United States,¹⁴² it seems unlikely that this model would be a good fit for a state like Mississippi.

5. Equal Protection Model

Next, there is the Equal Protection Model of bond reform. The Equal Protection Model addresses “the central equal protection concern that individuals may face disparate pretrial outcomes due to their race, poverty, or both.”¹⁴³ For example, Harrison County, Texas utilized the Equal Protection Model and eliminated cash bail schedules for misdemeanor offenses.¹⁴⁴ Therefore, individuals charged with misdemeanor offenses do not have to put up a set bond

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 913.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 914.

¹⁴¹ *Id.* at 915.

¹⁴² Ashar Jawad, *25 Poorest States in America*, YAHOO! FIN. (July 22, 2023), <https://finance.yahoo.com/news/25-poorest-states-america-130258343.html> [<https://perma.cc/N7EA-764M>].

¹⁴³ Garrett, *supra* note 91, at 916.

¹⁴⁴ *Id.*

amount to be released from jail. Instead, they are automatically released from jail.¹⁴⁵ In Harrison County, Texas, this resulted in an elimination of racial disparities in pretrial release data.¹⁴⁶

Many scholars advocate for a system that utilizes the Equal Protection Model.¹⁴⁷ Several jurisdictions, who have some of the lowest incarceration rates in the United States, have passed legislation that utilizes the Equal Protection Model and eliminates cash bond for misdemeanors and many non-violent felonies.¹⁴⁸ Therefore, in these jurisdictions, individuals charged with a misdemeanor or non-violent felony do not have to put up a monetary amount to be released from jail. Instead, they are simply released. One such jurisdiction includes New York, whose legislation “aimed to reduce the risk that someone would be jailed because they could not afford to pay for release and the unnecessary use of incarceration, both of which can have a profoundly disruptive effect on peoples’ lives.”¹⁴⁹ In New York, this bail reform legislation had a positive impact and resulted in a 31.4 percent decrease in the state’s jail population.¹⁵⁰ In Washington D.C., unaffordable cash bond was banned in 1992.¹⁵¹ Essentially, in Washington D.C., over 90 percent of people who are arrested are released without bail.¹⁵² Further, if an individual in Washington D.C. remains in jail for 24 hours after their bond is set, the court automatically reassess the bond amount and aims for an amount that individual can actually afford instead of forcing that individual to sit in jail on a bond that they cannot afford.¹⁵³ Essentially, in these types of jurisdictions that have undertaken bond reform measures, release

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 917.

¹⁴⁷ See generally Charles White, *Doing the Bare Minimum: Why a Preference Should be Expressed for Personal Recognizance Release*, RUTGERS J. L. & PUB. POL’Y, Fall 2020 at 1 <https://rutgerspolicyjournal.org/jlpp/wp-content/uploads/sites/26/2021/10/White-Final.pdf> [<https://perma.cc/4DED-GGN7>].

¹⁴⁸ Smith & Jorgensen, *supra* note 5.

¹⁴⁹ Ames Grawert & Noah Kim, *The Facts on Bail Reform and Crime Rates in New York State*, BRENNAN CTR. FOR JUST. (Mar. 22, 2022), <https://www.brennancenter.org/our-work/research-reports/facts-bail-reform-and-crime-rates-new-york-state> [<https://perma.cc/L9PA-X875>].

¹⁵⁰ Smith & Jorgensen, *supra* note 5.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

certainly appears to be the goal. This is a far cry from what one sees throughout the state of Mississippi. Instead, it is certainly arguable that, in the state of Mississippi, detention is the goal.

6. Alternatives to Arrest Model

Lastly, there is the Alternatives to Arrest Model of bond reform. The Alternatives to Arrest Model is used primarily for misdemeanor and lower-level offenses.¹⁵⁴ Essentially, under this model, “one can avoid arrest entirely—much less a pretrial hearing or possibility of detention—by issuing a citation and release or by diverting a person to treatment or other arrest alternatives.”¹⁵⁵ Therefore, this model avoids the problems that come along with imposing a bond amount on an individual by utilizing alternatives to arrest entirely, doing what appears to be attempting to find the root of the problem.¹⁵⁶ The limitation to this model is that “such programs necessarily rely on the discretion of law enforcement to refer individuals for release with a citation or to some other type of diversion at arrest, often using unclear and discretionary criteria.”¹⁵⁷

E. Critics of Bond Reform

There are several arguments that critics of bond reform are likely to employ in opposition to states or jurisdictions attempting to reform their current bond systems. While these arguments might appear to be logical on their face, an analysis and dive into research quickly reveals that these arguments are unfounded and lack any real basis.

Critics of bond reform might argue that bond reform leads to an increase in crime, given the connection between bond reform and the release of more individuals from jails.¹⁵⁸ However, jurisdictions that undertake bond reform measures do not see an increase in

¹⁵⁴ Garrett, *supra* note 91, at 918.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 919.

¹⁵⁸ Allie Preston, *The Case for Cash Bail Reform*, CTR. FOR AM. PROGRESS (Aug. 9, 2023), <https://www.americanprogress.org/article/the-case-for-cash-bail-reform/> [https://perma.cc/A9E9-8AZE].

crime.¹⁵⁹ In fact, quite the opposite takes place. Cash bail is associated with a six to nine percent increase in recidivism.¹⁶⁰ A study found that, after an individual spends twenty-three hours in pre-trial detention, any additional time that individual spends in detention is associated with a significant increase in the likelihood of that individual being rearrested upon their release and placed back in jail.¹⁶¹ This is likely due to pretrial incarceration's destabilizing impact that it has on individuals' abilities to maintain a job, housing, health, and care for their families.¹⁶² Even individuals who end up being found not guilty of their charges oftentimes spend years in poverty while being forced to continue payments on their bond amounts.¹⁶³ Further, spending time in jail also often leads to individuals losing their jobs, forcing these individuals to turn to crime to survive and further pushing this never-ending cycle of poverty and rearrest.¹⁶⁴ It appears as if bond is creating more problems when it comes to crime, rather than solving problems. Therefore, the argument that bond reform leads to an increase in crime is unfounded and supported by little to no evidence. In fact, is it more arguable that bond itself leads to an increase in crime.

Critics of bond reform might also argue that a secured bond provides an incentive to reappear in court to those arrested and accused of crime, given that this was one of the original purposes in the creation of bail.¹⁶⁵ The argument is that individuals would rather appear in court than having to retroactively owe the court the full monetary amount for failing to appear.¹⁶⁶ However,

¹⁵⁹ Preston & Eisenberg, *supra* note 120.

¹⁶⁰ Arpit Gupta et al., *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 J. LEGAL STUD. 471 (2016), <https://www.journals.uchicago.edu/doi/abs/10.1086/688907> [<https://perma.cc/LY6U-299Y>].

¹⁶¹ Preston & Eisenberg, *supra* note 120.

¹⁶² *High Cost, Low Return: Mississippi's Ongoing Incarceration Crisis*, *supra* note 42.

¹⁶³ *The Bondage of Bail*, CBS NEWS (June 2, 2019), <https://www.cbsnews.com/video/the-bondage-of-bail/> [<https://perma.cc/X7HB-PG3N>].

¹⁶⁴ *Id.*

¹⁶⁵ Nicole Zayas Manzano, *The High Price of Cash Bail*, AM. BAR ASS'N (Apr. 12, 2023), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-issues-in-criminal-justice/the-high-price-of-cash-bail/ [<https://perma.cc/7YSX-MWZB>].

¹⁶⁶ *Id.*

research has shown that secured bonds do not increase the likelihood of appearance in court.¹⁶⁷ Instead, unsecured bonds are just as effective as secured bonds when it comes to achieving the goal of appearance in court.¹⁶⁸ In other words, an individual who has to put up a monetary amount to be released from jail is just as likely to appear in court as individual who does not have to put a monetary amount to be released from jail.¹⁶⁹ If an individual has the intentions of not appearing in court, it does not matter what type of bond they receive, given that bonds virtually impose little to no incentive. Therefore, the argument that bond provides an incentive for individuals charged with crimes to appear in court does not seem to be well-founded, nor is it supported by evidence. All in all, while the arguments that critics to bond reform might produce appear to be logical on their face, a deeper dive into said arguments reveal their flaws and lack of standing.

F. Political Pushback Concerns

Political pushback might be a concern for jurisdictions hoping to implement bond reform measures, especially in a heavily conservative state like Mississippi. In fact, based on the percentage of residents who identify as conservative, Mississippi is the second most conservative state in the United States, falling just behind Alabama.¹⁷⁰ In New York, Republicans and even some Democrats are calling to roll back the bond reform measures that the state undertook in 2019, given recent increases in crime, even though these increases in crime have been found to be unrelated to the bond reform measures taken by the state.¹⁷¹ The notion of being tough on

¹⁶⁷ MICHAEL R. JONES, PRETRIAL JUST. INST., UNSECURED BONDS: THE MOST EFFECTIVE AND EFFICIENT PRETRIAL RELEASE OPTION (Oct. 2013), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/unsecured-bonds-most-effective-and-efficient-pretrial-release> [https://perma.cc/RN8R-9Z3T].

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Red Tide: 'Bama Displaces Mississippi as Most 'Conservative' State*, DAILY J. (Feb. 4, 2013), https://www.djournal.com/mbj/news/red-tide-bama-displaces-mississippi-as-most-conservative-state/article_946f3855-9da2-5190-b0c4-c89c861eb149.html [https://perma.cc/526X-PSNZ].

¹⁷¹ Emily Russell, *The Political Fight Around New York's Bail Reform, Explained*, WXXI NEWS (Mar. 30, 2022, 3:43 PM), <https://www.wxxinews.org/around-the-state/2022-03-30/the-fight-around-new-yorks-bail-reform-explained> [https://perma.cc/C8XA-UA93].

crime is oftentimes used as a rallying call for Republicans throughout the country and especially in a heavily conservative state like Mississippi.¹⁷² Therefore, it would be rational to assume that the logic behind the notion of being tough on crime does not align with or include releasing additional individuals from pretrial detention through bond reform measures. Supporters of the concept of being tough on crime would likely be strongly opposed to measures that would have the effect of releasing individuals from jail, considering that doing so does not necessarily fit the mold of being tough on crime. However, as seen through the amicus brief filed in *Daves v. Dallas*, even those who might be expected to be conservative, like law enforcement officials, support bond reform measures.¹⁷³ In fact, this amicus brief was signed by thirty-six elected prosecutors, thirteen current or former police chiefs or sheriffs, and sixteen former attorney generals, district attorneys, and U.S. Attorneys.¹⁷⁴ All in all, drastic times to do call for drastic measures. As seen through the conditions in Hinds County, Mississippi is in desperate need of some form of change.¹⁷⁵ Given that law enforcement officials have begun to come out in support of bond reform, considering the impact that overcrowded jails have on their profession and workload, perhaps bond reform is on the path to becoming a not so politically divisive topic.¹⁷⁶ In all, conservatives are likely to sympathize with the concerns of law enforcement officials themselves. Therefore, if bond reform is framed in such a way that it would help to alleviate problems faced by law enforcement officials, perhaps more conservatives throughout the state of Mississippi would become supportive of such a change, eliminating the obstacle of garnishing political support.

¹⁷² Adam Gabbatt, *Stark Warning Over Republicans' 'Dehumanizing' Rhetoric on Crime*, GUARDIAN (May 24, 2023, 6:00 AM), <https://www.theguardian.com/us-news/2023/may/14/republican-tough-on-crime-us-elections-2010> [https://perma.cc/QZ2P-6CT7].

¹⁷³ *More Than 80 Current and Former Prosecutors and Law Enforcement Leaders Call for Bail Reform in Legal Filing*, *supra* note 101.

¹⁷⁴ *Id.*

¹⁷⁵ Corpuz, *supra* note 52.

¹⁷⁶ *More Than 80 Current and Former Prosecutors and Law Enforcement Leaders Call for Bail Reform in Legal Filing*, *supra* note 101.

G. Proposed Approach for Mississippi

Given each of the models to bond reform, their limitations, and the current situation in the state of Mississippi, Mississippi would seem to be benefit the most from the Equal Protection Model, which provides that individuals charged with misdemeanors and non-violent felonies be given an unsecured bond, resulting in these individuals not having to put up a monetary amount to be released from jail while awaiting their trials.¹⁷⁷ This would probably be the most effective approach for Mississippi to take to bond reform, given that Mississippi's problems appear to stem from its severe overcrowding issues.¹⁷⁸ This model has proven to be able to effectively lower pretrial detention rates, as seen in both Washington D.C. and New York.¹⁷⁹ Considering that Mississippi has more inmates per capita than any state or nation in the entire world,¹⁸⁰ such a model would probably be the most effective at lowering the state's staggering incarceration rate and alleviating the severe constitutional issues that have come along with the state's criminalization of poverty.

CONCLUSION

The criminalization of poverty is a real issue, not only in Mississippi but throughout the United States as a whole. In Mississippi, there appears to be an epidemic of poverty being criminalized through monetary bail amounts.¹⁸¹ The vast majority of people sitting in jails throughout the state of Mississippi while awaiting their trials are charged with either misdemeanors or non-violent felonies.¹⁸² Ultimately, they sit in jail because they cannot afford their bails, while wealthier individuals are able to enjoy their freedom, experiencing the privileges that come with such freedom.¹⁸³ This has led to deteriorating jail conditions throughout the state of Mississippi, especially severely overcrowded jails.¹⁸⁴

¹⁷⁷ Smith & Jorgensen, *supra* note 5.

¹⁷⁸ See Thompson, *supra* note 1.

¹⁷⁹ Smith & Jorgensen, *supra* note 5.

¹⁸⁰ Mitchell, *supra* note 41.

¹⁸¹ *High Cost, Low Return: Mississippi's Ongoing Incarceration Crisis*, *supra* note 42.

¹⁸² *Id.*

¹⁸³ Heaton et al., *supra* note 4, at 714, 722.

¹⁸⁴ Thompson, *supra* note 1.

This also leads to a multitude of potential constitutional violations on the part of the state of Mississippi against these individuals who are detained leading up to their trials, given that these individuals are forced to endure the negative impacts that being detained leading up to trial has on one's case.¹⁸⁵ Therefore, Mississippi should adopt the Equal Protection Model of bail reform, allocating unsecured bonds to those charged with misdemeanors and non-violent felony offenses.¹⁸⁶ This would allow staggering rates of individuals to be released from Mississippi jails, putting the State of Mississippi one step closer to solving its pretrial problems.

¹⁸⁵ Heaton et al., *supra* note 4, at 722.

¹⁸⁶ Smith & Jorgensen, *supra* note 5.