

Opinion: Can't pay the court? Go to jail. Debtors' prison lives on.

By Tony Messenger

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Tony Messenger, the metro columnist at the St. Louis Post-Dispatch, is the author of “[Profit and Punishment: How America Criminalizes the Poor in the Name of Justice.](#)”

Roxanna Beck spent seven days in jail because she was poor. It was 2020, and the resident of Elmore County, in Idaho, was arrested under a warrant for “failure to pay.” Failure to pay whom? The Elmore County Magistrate Court.

Check nearly any municipal or county jail in the country, and you’ll find people locked up on the charge. It means the defendant owed fines and fees on previous court debt, in most cases, as in Beck’s, stemming from a misdemeanor conviction that had involved no jail time. Beck hadn’t committed another crime; but to try to collect the \$643 she owed the court, a judge ordered her held on \$6,400 cash bail.

Beck had two options: Pay the bail, or pay the debt. If she couldn’t afford either one, then she was going to stay locked up in the modern equivalent of debtors’ prison.

Sounds, ridiculous, right? The Idaho Supreme Court thought so — unanimously. Last summer, the court ruled in Beck’s favor that the process of issuing arrest warrants for people who fall behind on court debt, and jailing them to force payment, is “constitutionally infirm.”

The Idaho ruling followed a similar one, also unanimous, by the Missouri Supreme Court in 2019. The court directed judges to stop locking people up because they couldn’t afford their previous bills for jail time. Missouri, like most states, has a statute that allows cities and counties to charge inmates for the expense of their incarceration.

Both cases highlight how two elements of the criminal justice system — the use of cash bail and the imposition of ever-increasing fines and fees — can keep poor people stuck in a cycle of poverty that is virtually impossible to escape.

Both Missouri and Idaho are deep-red, conservative states, so when their supreme courts speak with a unified voice, it sends a strong message: There is nothing tough on crime about putting poor people in jail because they can’t afford the debt heaped upon them by courts.

A Laura and John Arnold Foundation study suggests such practices make communities less safe. In 2013, the nonprofit foundation found that low-risk Kentucky defendants held behind bars for even a few days were 40 percent more likely to commit a crime than those who weren’t held; the recidivism rate jumped to 74 percent for those held 31 days or longer.

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Residents against the city of Maplewood, Mo., achieved class-action status on Nov. 10.

The case, attorneys Andrea R. Gold and Blake Strode say, is emblematic of how cash bail and fines and fees work hand in hand to create a two-tiered justice system.

“Every night,” Strode told me, “thousands of people in this country are kept in jail because they simply cannot afford to buy their release. In Maplewood, thousands of class members were held in jail because they could not afford a sum of money that represented the fines they owed or would owe to the city.”

Too often, when the issue of cash bail gets media attention, it’s because of a high-profile, violent crime committed by somebody who was released pretrial, and the incident, often tragic, leads to pushback on reform efforts. Such headlines ignore the existing data that reforming cash bail, if anything, makes communities safer.

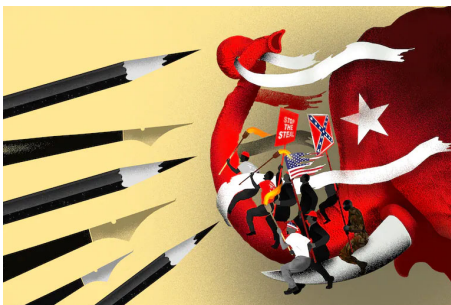
In New Jersey, for example, after voters in 2014 passed a constitutional amendment to significantly reduce the use of cash bail, the jail population dropped, the average time a person spent in pretrial detention dropped 40 percent, and there was no statistically significant change in crime rates. “Concerns about a possible spike in crime and failures to appear did not materialize,” the state’s judiciary wrote in its 2018 annual report.

A bill pending in Congress, filed in the Senate by Sen. Brian Schatz (D-Hawaii) and in the House by Rep. Jerrold Nadler (D-N.Y.), would create federal grants for local jurisdictions that seek ways to end the collection of predatory fines and fees in the court system.

That’s a path toward justice. But true reform won’t happen until courts and legislatures deal with both ends of the poverty cycle: getting rid of cash bail except in the most violent cases, and eradicating the insidious fines and fees that turn judges into tax collectors at the expense of public safety.

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