

# Cashing In On Racist Bail



*Sonali Kolhatkar*

02-09-2024 ~ *Cash bail is racist. No wonder the GOP loves it and is relying on expanding it as a cynical election-year ploy.*

Most Americans have not considered “cash bail” as critical to equality and freedom. The term is an esoteric one but is increasingly central to the ongoing battle over racial capitalism, policing, and mass incarceration, especially in an election year as critical as 2024.

Here’s what cash bail means: When arrested by police on suspicion of committing a crime, everyone in the United States has the right to due process and to defend themselves in court. But in a cash bail system, when judges set bail amounts, those who cannot pay the full amount remain jailed indefinitely—a [clear violation of their due process rights](#)—while the rich pay their way out of jail.

Now, Republicans in cities and states around the nation are [rolling back efforts](#) to reform cash bail systems and Georgia’s GOP-dominated legislature is the latest to do so. The state [Senate](#) and [House](#) recently passed a bill expanding cash bail for 30 new crimes, some of which appear to be aimed at protesters, such as unlawful assembly. Further, it criminalizes charitable bail funds that have bailed people out when they cannot afford to do so, restricting such funds, and even individuals, to bailing out no more than three people per year or facing charges themselves.

In Georgia, this is especially significant because of [a mass movement](#) that has arisen to oppose Atlanta’s “Cop City,” a massive police training project that is

symbolic of everything wrong with our systems of policing, courts, and incarceration.

Marlon Kautz, who runs the [Atlanta Solidarity Fund](#) called the system of cash bail “[a loophole](#)” in the criminal justice system, allowing courts to indefinitely jail people without charges if they cannot pay exorbitant bail amounts. Kautz, whose organization is a bail fund of the sort that Georgia is targeting, pointed out that the GOP-led bills to criminalize bail funds and expand cash bail “exposes that the loophole is not an accident, it’s the intended purpose of the bail system.”

Kautz added, “Police, prosecutors, and politicians want a bail system which allows them to punish their political enemies, poor people, and people of color without trial.” He’s right. A police officer could theoretically arrest anyone they wanted, and if a judge requires cash bail that is beyond their financial capacity, the person would remain detained indefinitely while awaiting charges and a trial. In fact, Kautz was one of three people affiliated with the Atlanta Solidarity fund to be arrested on what appear to be [clearly politicized charges](#) of fraud and money laundering in June 2023.

Given how [racist](#) American policing is, the system of cash bail is intended to ensure that people of color who are disproportionately arrested are also disproportionately detained in jails without due process. A 2022 [report](#) by the U.S. Commission on Civil Rights examined the impact of cash bail and found that between 1970 and 2015, the number of people jailed before trial increased by a whopping 433 percent, and there are currently about 500,000 such people stuck in jails across the nation who have not been tried or convicted of any crimes.

The report also found “stark disparities with regards to race” in who is impacted. Unsurprisingly Black and Brown men were the group most subjected to higher bail amounts.

There is a growing movement to address such a systemically racist trend. In 2023, the state of Illinois became the first in the nation to [entirely abolish](#) cash bail. The state legislature initially passed its cash bail ban in 2021 but implementation was held up by lawsuits from county prosecutors and sheriffs. Now, having survived legal challenges, the cash bail era in Illinois is officially over.

Other states, such as New Mexico, New Jersey, and Kentucky, have [almost entirely ended cash bail](#) requirements in recent years. In California, [Los Angeles](#)

[County](#) has also similarly eliminated cash bail for all crimes except the most serious ones. The trend has been a positive one in a nation that has one of the [most racist and punitive criminal justice systems](#) in the world.

And then came the Republicans' regressive push-back. Reversing progress on bail reform is a new flashpoint in the GOP's culture wars intended to scare voters into choosing them at the ballot. The [Associated Press](#) captured this in a single sentence near the end of an article about Georgia's cash bail restrictions, saying that "it could be a sign that Republicans intend to bash their Democratic opponents as soft on crime as they did in 2022."

That [same AP story](#) paraphrased Republican state representative Houston Gaines, of Athens, Georgia, as saying "people let out of jail without bail are less likely to show up for court than those who have paid to get out of jail." But the AP added "national studies contradict that claim." When in doubt, the GOP can be relied upon to lie its way into justifying harmful policies, and Gaines was adamant in falsely claiming that cash bail reforms in other states have been "an unmitigated disaster."

His Republican colleagues in states such as Indiana, Missouri, and Wisconsin have introduced numerous bills [expanding the use of cash bail](#). Expanding the racist criminal justice system is a cynical GOP election-era ploy, one that isn't even terribly original.

Recall George H. W. Bush's 1988 presidential election campaign ads centering on a Black man named [Willie Horton](#) who, a year before the election, was furloughed while being incarcerated, and escaped. He went on to rape a woman and stab her fiancé, offering Bush the perfect poster child for Democratic failures on crime. The Willie Horton ads are considered a quintessentially racist dog whistle that were intended to generate fear of Blackness among white voters. They helped Bush defeat his opponent.

Sharlyn Grace, an official at the Cook County Public Defender's office in Illinois [said](#), "It is exceedingly rare for someone who's released pretrial to be arrested and accused of a new offense that involves violence against another person," and that "[f]ears about public safety are in many ways greatly overblown and misplaced." But all that the tough-on-crime crowd needs in order to make the case of rampant crime is that single exception to the general trend.

Republicans in Wisconsin found their modern-day Willie Horton in a Black man named [Darrell Brooks Jr.](#) who drove a car into a 2021 parade in Waukesha, killing six people. Brooks had been arrested just prior to the fatal crash for domestic violence and released on a relatively low bail amount of \$1,000. The Wisconsin GOP [featured Brooks in 2022 campaign ads](#) showing how they are “tough on crime” compared to Democrats. It wasn’t enough that Brooks was eventually sentenced to more than six consecutive life sentences although he says he didn’t intend to drive his car into the parade. His example has served as the ideal foil for election-year fears of people of color and [Republican efforts](#) to expand cash bail and win political power.

Election years are a scary time for people of color in the U.S. They are marked by race-based voter suppression [efforts](#), a rise in [racist political rhetoric](#), and even a surge in [racist hate crimes](#). The expansion of cash bail laws is yet another attack on Black and Brown communities—one that must be exposed and confronted.

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