

# Poverty Fact Sheet: Pay-to-Stay Jail Fees in Wisconsin

no. 15, 2017–2018, prepared by Will Maher

## INTRODUCTION

Being incarcerated can be expensive. Besides the loss of income from work, inmates may be responsible for “pay-to-stay” fees when they are in jail. Pay-to-stay fees are charges assessed to incarcerated individuals and may include fees for booking, daily room and board, work release, physicals, medication, hospital visits, and dental visits.<sup>1</sup> They are distinct from the fines and restitution that defendants may be ordered to pay as part of their sentences. Nearly all states have laws allowing county jails to seek reimbursement from inmates for room and board and medical fees, but the use of fees is usually based on county ordinance.<sup>2</sup> While these fees also exist in prisons, this factsheet will explore jail-based pay-to-stay charges in Wisconsin, particularly for inmates in pretrial detention. Although the terms *prison* and *jail* are often used interchangeably, they refer to different institutions. County jails are operated locally and house inmates awaiting trial or serving short sentences, generally less than a year. State and federal prisons hold convicted inmates serving longer sentences.

Over the last 30 years, the use of pay-to-stay fees has expanded in the United States. The reasons for this are complex but, broadly, are found to be connected to the large growth of the incarcerated population and declines in funding for local justice systems.<sup>3</sup> These fees can place a disproportionate burden on low-income defendants not just because they are less able to pay the fees themselves, but because their lack of financial resources can expose them to longer pretrial jail stays and thus larger fee assessments.

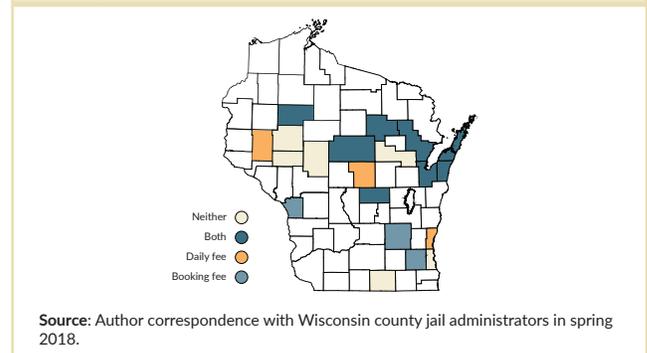
## JAIL FEES VARY FROM COUNTY TO COUNTY IN WISCONSIN

The types and amounts of fees that might be assessed to an inmate vary widely by county. Wisconsin statutes give counties discretion to charge (or not charge) each individual inmate.<sup>4</sup> To learn more about variation in pay-to-stay fees in Wisconsin counties, we sent emails to county jails in each of Wisconsin’s 72 counties to ask about two common types of fees—daily and booking—that they may assess. Twenty-two counties responded, representing urban and rural counties from across the state, as shown in Figure 1. Of these, 11 charge a booking fee, which averages about \$28. Eleven, or half the sample, charge a daily rate for room and board, which averages \$16 per day. Eight charge both a booking fee and a daily rate, while six charge neither.

## WISCONSIN



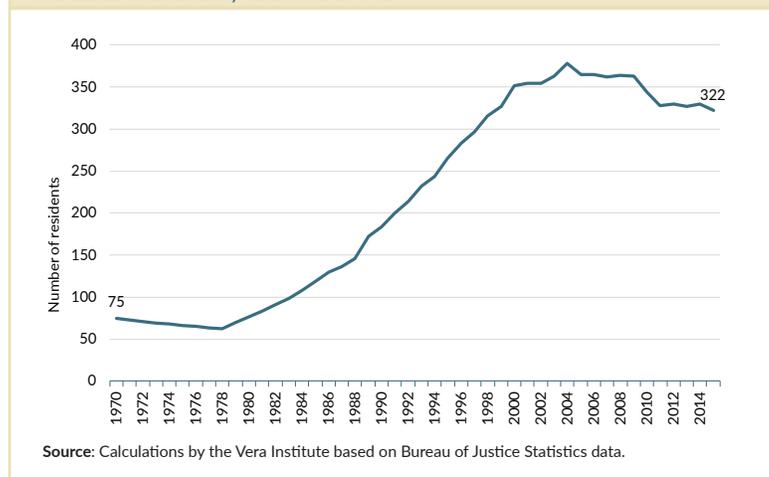
Figure 1: Of 22 responding counties, sixteen charge a booking or daily fee



## LARGE INCARCERATED POPULATIONS HAVE STRAINED LOCAL AND STATE BUDGETS

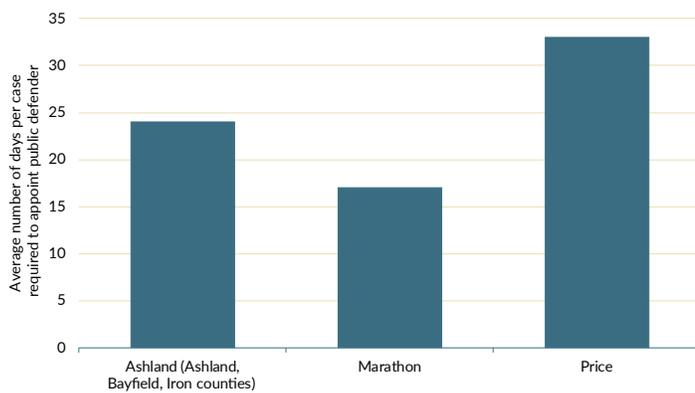
In Wisconsin today, rates of the jailed population per 100,000 residents ages 15–64 are nearly five times higher than they were in the early 1970s, as shown in Figure 2. This growth in jail population mirrors national trends. For local policymakers facing high incarceration expenditures and revenue streams constricted by state and federal government, pay-to-stay fees are often an attractive and politically workable option.<sup>5</sup> Yet, fees do not appear to be an effective way to meet jail costs.<sup>6</sup> A national survey by the Vera Institute found that pay-to-stay fees made up an average of only about 3 percent of the budgets of surveyed jails.<sup>7</sup> In Wisconsin, where the cost of housing an inmate is estimated to be around \$100 a day, imposed pay-to-stay fees account for a relatively small portion of that expense. Meanwhile, collection rates are low and costs of administering collection services can be considerable.

Figure 2: The Wisconsin jail incarceration rate per 100,000 residents has increased dramatically since the 1970s



## LONGER PRE-TRIAL JAIL STAYS CAN LEAD TO LARGER FEE ASSESSMENTS

Figure 3: Low-income defendants may face long pretrial detentions due to shortages of public defenders



Source: Wisconsin State Public Defender legislative testimony, reported in Wisconsin Supreme Court's *In re the Petition to Amend SCR 81.02*, June 2018.

Wisconsin Supreme Court wrote that chronic underfunding of the Office of the State Public Defender “has reached a crisis point.”<sup>11</sup> This is especially the case in northern Wisconsin and other rural parts of the state where there are fewer lawyers and driving time for court-appointed attorneys is a greater burden.<sup>12</sup> Public defenders offices in northern Wisconsin report having to make dozens of contacts to locate and appoint a public defender for each case. As shown in Figure 3, this process can take weeks, during which time defendants often must wait in jail.

The accumulation of jail fees is in part a function of time spent in jail awaiting trial. Those who are least able to pay face conditions likely to lead to longer stays compared to defendants with greater financial means. In the United States, 34 percent of defendants remain in jail until trial because of unaffordable bail.<sup>8</sup> Wisconsin statutes indicate that bail should only be set at an amount sufficient to help guarantee appearance in court. Statutes provide that other, nonmonetary conditions should be applied for issues of public safety, for example.<sup>9</sup> However, in practice, bail amounts are often tied to factors such as the severity of the charge. Because of this, low-income defendants who cannot afford bail are likely to remain in jail until their trials and are at risk of being assessed pay-to-stay fees during their detention.

Further, an acute shortage of public defenders in Wisconsin has made it more likely that low-income or indigent defendants will face longer pre-trial jail stays.<sup>10</sup> The state’s compensation rate for public defenders is the lowest in the nation and, in a recent petition response, the

## PAY-TO-STAY FEES ARE DISPROPORTIONATELY BURDENSOME TO LOW-INCOME INMATES

Figure 4. Pay-to-stay fees can be a significant burden for low-income inmates



Source: Pre-arrest income is based on national-level data from B. Rabuy and D. Kopf, *Prisons of Poverty: Uncovering the Pre-incarceration Incomes of the Imprisoned*, Prison Policy Initiative, July 9, 2015. Fee accruals are based on averages across counties that charge fees from the author’s correspondence with Wisconsin county jail administrators in spring 2018.

Nationally, the average annual income of an inmate prior to arrest is only around \$19,000.<sup>13</sup> Based on the charges reported in our survey of Wisconsin county jails, a jail stay of 25 days (a U.S. average stay length) could lead to a cost of roughly \$450 for the prisoner. A jail stay of 150 days could accumulate an average charge of \$2,500. Besides pay-to-stay fees, other debt, including child support arrears, can accrue when people are incarcerated.<sup>14</sup> Because even short periods of incarceration can put jobs and earnings at risk, fee-based debt accrued during jail stays can represent a large burden for low-income defendants.<sup>15</sup> The presence of such debt can make it harder to secure employment, housing, transportation, and other necessities, thus making reintegration into society more difficult.<sup>16</sup> Yet, the consequences of even short pretrial jail stays are likely to extend beyond the challenges of debt. A report by the Laura and John Arnold Foundation found that pretrial detention of low- to moderate-risk offenders was strongly correlated with higher rates of new criminal activity in the short- and long-term.<sup>17</sup>

## REDUCING JAIL STAYS COULD SAVE TAXPAYER MONEY AND REDUCE DEBT FOR INMATES

The use of pay-to-stay fees developed alongside a dramatic increase in the jail population starting in the 1990s. Efforts to reduce jail stays, particularly for those in pretrial detention, have the potential to reduce the costs of maintaining county jails while also reducing the need for and the accrual of pay-to-stay fees for detained individuals. In Wisconsin, reforming processes and increasing funding for and access to public defenders has the potential to make justice processes fairer. At the same time, there is relatively little centralized information about the use and consequences of pay-to-stay type fees in Wisconsin’s county jails. Improved data collection on these types of fees could help policymakers better understand the impact of fees on those involved with the criminal justice system in Wisconsin.

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## ENDNOTES

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- <sup>1</sup>L.B. Eisen, “[Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause](#),” Brennan Center for Justice, July 31, 2014.
- <sup>2</sup>Brennan Center for Justice, “[Is Charging Inmates to Stay in Prison Smart Policy?](#)”
- <sup>3</sup>J. Soss, “[How Governments and Corporations Made the Criminal Justice System Profitable](#),” *Poverty Research and Policy Podcast*, Institute for Research on Poverty, May 2017.
- <sup>4</sup>[Wisconsin Statute 302.372\(2\)\(d\)](#)
- <sup>5</sup>J. Soss, “[How Governments and Corporations Made the Criminal Justice System Profitable](#),” *Poverty Research and Policy Podcast*, Institute for Research on Poverty, May 2017.
- <sup>6</sup>C. Henrichson, J. Rinaldi, and Ruth Delaney, *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*, Vera Institute of Justice, New York, May 2015.
- <sup>7</sup>C. Henrichson, et al., *The Price of Jails*.
- <sup>8</sup>B. Rabuy and D. Kopf, [Detaining the Poor: How Money Bail Perpetuates and Endless Cycle of Poverty and Jail Time](#), Prison Policy Initiative, May 10, 2016.
- <sup>9</sup>J.A. Kremers, “[Milwaukee Moves Away From Money Bail System](#),” State Bar of Wisconsin, *Wisconsin Lawyer* 90, No. 6 (2017).
- <sup>10</sup>D. Kaeding, “[Wisconsin Struggling to Find Lawyers for Public Defense Cases](#),” *All Things Considered*, NPR, May 15, 2018.
- <sup>11</sup>Supreme Court of Wisconsin, “[In re the Petition to Amend SCR 81.02](#),” No. 17-06. Filed June 27, 2018.
- <sup>12</sup>Supreme Court of Wisconsin, “[In re the Petition to Amend SCR 81.02](#).”
- <sup>13</sup>B. Rabuy and D. Kopf, [Prisons of Poverty: Uncovering the Pre-incarceration Incomes of the Imprisoned](#), Prison Policy Initiative, July 9, 2015.
- <sup>14</sup>J. Noyes, M. Cancian, and L. Cuesta, “[Holding Child Support Order of Incarcerated Payers in Abeyance: Final Evaluation Report](#),” Institute for Research on Poverty, University of Wisconsin–Madison, CS2009-11, September 2012.
- <sup>15</sup>C. Mai and R. Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010–2015*, Vera Institute of Justice, May 2017.
- <sup>16</sup>American Civil Liberties Union of Ohio, [The Outskirts of Hope: How Ohio’s Debtors’ Prisons are Ruining Lives and Costing Communities](#), April 2013.
- <sup>17</sup>C.T. Lowenkamp, M. VanNostrand, and A. Holsinger, [The Hidden Costs of Pretrial Detention](#), The Laura and John Arnold Foundation, November 2013.