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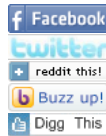
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The Return of Debtors' Prisons



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By Steve Breyman ([about the author](#)) Page 1 of 1 page(s)



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Spent any time recently (voluntarily or not) in an urban courtroom? After an hour or two, you're quite certain that debtors' prisons are back with a vengeance, and a twist. As to the vengeance: In New York City alone, according to a new report from [Human Rights Watch](#), thousands of misdemeanor defendants are held in pre-trial detention every year because they're unable to throw bail. Note the "pre-trial" part: these are folks merely accused rather than convicted of any offense. The situation is even worse than debtors' prison because the accused don't even owe a debt. They end up doing time in advance of a trial for the crime of being poor. It's like a down payment on a sentence that may or may not include incarceration (but that's not all the sentences may include, as we'll see). What working poor person has \$1000 lying around to invest in a municipal court as bail when they can't make the rent, feed themselves or their children, or pay for heat? Nobody I've ever met. And what of the rest of our cities' human flotsam, the unskilled unemployed, homeless, seriously mentally ill, or substance-dependent?



The details are striking.

"Among defendants arrested in 2008 on nonfelony charges who had bail set at \$1,000 or less, 87 percent were incarcerated because they were unable to post the bail amount at their arraignment. On average, they spent almost 16 days in pretrial detention for low-level offenses. Most were accused of nonviolent minor crimes such as shoplifting, turnstile jumping, smoking marijuana in public, drug possession, trespassing, and prostitution."

Nearly a quarter of the people spending time behind bars on Riker's Island in 2008--one in four inmates--were there because they didn't have the money to pay bail on a misdemeanor charge. These unfortunate souls may have been presumed innocent of the criminal charges by the judge, but they were nonetheless jailed for being poor. According to Human Rights Watch (HRW), "pretrial supervision" of misdemeanor defendants is an all-around superior alternative to jailing the poor. But New York City has no such program.

Bail exists to force a defendant back into the courtroom as a case progresses. Apart from establishing a pretrial supervision program, HRW recommends judges might replace cash bail

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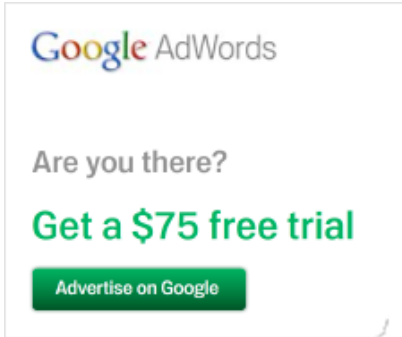
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by unsecured appearance bonds (a promise to pay a certain amount upon failure to appear). Failure to appear is hardly rampant in the City's courts. HRW found that "84 percent of released defendants show up for all their court proceedings; and most of those who miss a scheduled court appearance come back to court within 30 days."

Then there are the joys of imprisonment for New Yorkers presumed innocent.



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"Jail can be dehumanizing, unpleasant, and even violent . . . It exacts a high toll on those who are incarcerated as well as on their families, who suffer from reduced income and absent parents or caregivers. Many defendants plead guilty simply to avoid or end pretrial detention. Indeed, guilty pleas account for 99.6 percent of the convictions of New York City misdemeanor defendants."

As if this routine injustice were not enough, there's the twist, a problem not addressed by the HRW report. It concerns the sentences following the legal proceeding. Judges often sentence those convicted of nonviolent

misdemeanors to some combination of community service and a fine. But if you didn't have the wherewithal to prevent pre-trial detention, where will you find it to pay the fine? Perhaps Human Rights Watch will follow up the current study with one of this problem. How many people spend how much time behind bars because they fail to pay their court-ordered fines on time? Debtors' prisons were common in the United States until the 1830s. Robert E. Lee's father, and Declaration of Independence signatories James Wilson and Robert Morris spent time in prison for inability to repay debts. Gentlemen of such lofty station would not likely be incarcerated today for failure to pay (see the case last month of the hit-and-run hedge fund manager allowed a misdemeanor plea by a Colorado judge). Today, incarceration for inability to pay is reserved for the poor.

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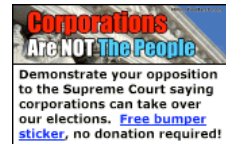
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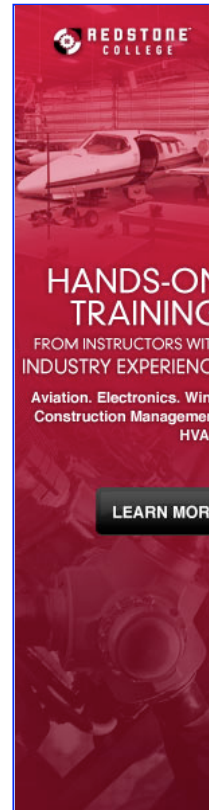
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