

Just Savings: The Success of Court Debt Reform

Since the passage of court debt reform legislation in 2007 and 2008, the court fine and fee assessment process is more cost effective, fair, and has made significant improvements away from the unnecessary incarceration of indigent defendants for court debt. This report is part of the ongoing research assessing and monitoring court debt incarceration to ensure that indigent defendants are not unnecessarily and unconstitutionally deprived of their liberty because of their inability to pay court fines and fees.

The total number of people incarcerated per year for court debt has decreased from 2,418 people in 2006 to 1,755 in 2008, and the total number of beds required at the prison has decreased from 24 to 15. These reductions have saved the state money, including an estimated \$190,000 in per-person costs (or marginal costs). At the same time that these improvements have been made, Rhode Island courts actually increased the amount of funds collected yearly by \$160,599 to over 23.68 million dollars in 2008.¹

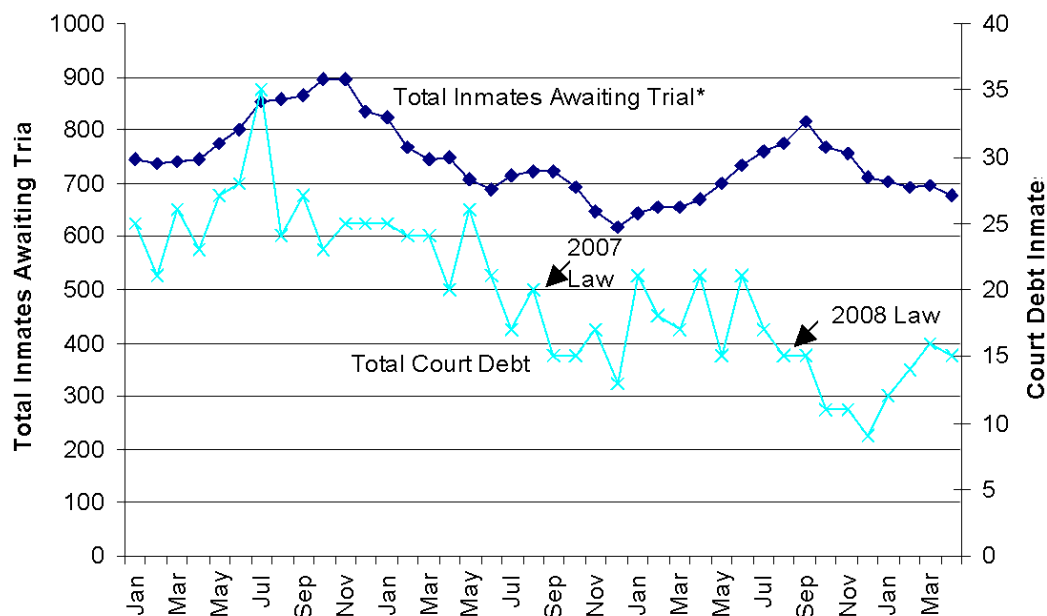
This report is an update to the 2008 report *Court Debt and Incarceration from 2005-2007* (<http://www.riflc.org/pagetool/reports/CourtDebt.pdf>) which provides detailed related research. Court debt is one of the most frequent reasons for incarceration in Rhode Island. While the current system is far from perfect, significant improvements have been made.

Court Debt Collection and Assessment

In Rhode Island individuals who owe money to the state because of past criminal convictions are frequently incarcerated because they fail to appear at 'Ability to Pay Hearings'. The state assesses relatively high fees for each criminal charge and individuals that owe money are put on payment plans requiring regular court payments or court appearances. If individuals fail to appear at one of these court dates, a warrant is issued. Upon arrest, they are frequently incarcerated. Refer to the full 2008 report for a complete discussion of this process. Restitution is money that is owed a victim, not the state. All data in this report relates only to non-restitution court debt and incarceration for non-restitution court debt.

Court Debt Prison Population 2006-2009

Fig. 1



¹ Rhode Island Judiciary report on court debt collection, January 31, 2009.

*This is the total amount of people incarcerated on average each day that month that are not serving prison sentences. The number of people held for court debt only is subtracted from this number to obtain comparison data on how the total prison population is changing separate from court debt changes.

Legislative Changes

Rhode Island passed several pieces of legislation that reform the court assessment and collection process due to concerns that this process was resulting in excessive and cost-inefficient incarceration,

2007 Increase in Credit Toward Court Debt for Incarceration

Prior to 2007 an individual incarcerated for court debt was credited \$5/day spent in prison. In 2007, this credit was increased to \$150/day.

2008 Surety Bail Instead of Cash Bail

In 2008, the state ended the use of cash bail for all defendants. As a result, individuals incarcerated for court debt, who were previously held on cash bails equal to the total amount they owed, are now held on surety bails. This means, that if they can pay 10% of the bail or put up collateral for 10%, they are released on bail.

2008 Assessment and Collection Reform

Legislation sponsored by Representative Patrick O'Neil and Senator Harold Metts reformed the assessment and collection process in several ways to make it more efficient:

- Full payment of restitution owed to victims mandatory and not subject to judicial waiver
- Judges must take ability to pay into account when assessing fine and fees; provides for guidelines for discretionary reduction of assessments for indigent defendants
- Requires an ability to pay hearing 48 hours after incarceration

Major Results

While it is impossible to conclude definitely that the changes over the past several years are because of this legislation, the court debt collection process has become more cost effective since these reforms.

- Total number of beds needed at the prison for court debt has decreased from an average of 24 in early 2006 to 15 in early 2009 (Figure 1, bottom line).
- Total number of incarcerations for court debt decreased from 2,418 people in 2006 to 1,755 in 2008 (Figure 2, bottom line. Top line is for comparison). For example, in January 2006, 183 people were incarcerated for court debt. In January 2009, 120 people were incarcerated for court debt, a decrease of 57 people.
- While court debt incarceration decreased after the legislation passed in 2008, in early 2009 there has been a significant increase in both the number of people jailed for court debt per month and the total number of people in prison at a time. This rise in incarceration corresponds with significant rise in joblessness in Rhode Island due to the recession.
- The length of incarceration for court debt has decreased from an average of 4.3 days/incarceration in early 2006 to 3 days/incarceration in early 2009 (Figure 3).
- Surety bails have replaced cash bails, however total bail amounts have increased from an average of \$799 in January, 2006 to \$4,828 in January, 2009. Judges have responded to the end of cash bail with large increases in the surety bail. A \$4,828 surety bail is equivalent to paying \$483 cash bail, so the effective bails have actually decreased.
- Total funds collected show a continued high rate of collection. In 2008, the three year collection rate for all courts was 76% and in 2007 it was 78%. Courts collected 23.68 million dollars in 2008 and 23.53 million dollars in 2006.

Savings

The decline in court debt incarceration has saved the money needed to arrest, try, process, guard, feed, and house over 1,000 people so far. Calculating savings requires analyzing both marginal costs per bed and any savings that result from larger reductions in population. Since the 2007 legislation, there has been an estimated savings of \$190,000 in marginal costs. This includes the savings from arresting, adjudicated, processing, and incarcerating fewer individuals.² In addition to these per-person costs, the total population at the Intake Service Center has been reduced by roughly 10 inmates at a time. This has corresponded with an overall decrease in the Awaiting Trial population at the Intake Service Center, as shown in the top line in Figure 1. Considering that the Intake Service Center continues to exceed its Federally mandated population level during population peaks, this reduction in inmates helps maintain the building below maximum capacity.

Paying Bail

The frequency which defendants pay bail has changed during the periods after the 2007 and 2008 legislation, as shown in Figure 3. The total percentage of defendants who paid bail was 17% in the first period, 17% in the second period, and 15% in the third period. However, this change is not necessarily a result of defendants being less likely to pay surety bails versus cash bails. It could also be a result of the reduction in defendants held for smaller debts as the court decreases incarceration of indigent defendants.

Figure 3 charts the correlation between the rate defendants make bail and the size of the bail. Defendants are over three times as likely to pay the state the bail amount when the bail is smaller. The defendants who pay bail spend considerably less time in prison since most people who pay bail pay before the second night.

The trend-line for July 2008-February 2009 shows the trend since the passage of the 2008 legislation, including the surety bail legislation. After the law changed, judges began setting surety bails at higher amounts than the previous cash bails. Defendants can pay 10% of the surety bail and be released. The bail amounts for this period are calculated at 10% the total, since this is the effective bail for the defendant. As Figure 2 shows, in 2009 fewer defendants paid bail in comparison to defendants in 2008 with equivalent bails.

Length of Incarceration

As shown in Figure 4, the length of court debt incarceration has decreased significantly since 2006. In particular, fewer defendants are held for long periods of time. When defendants do pay bail, they almost always pay within the first two days. This makes incarceration over two or three days ineffective since the state pays for extra days with no financial gain. Longer incarcerations are even more clearly inefficient because defendants now have a credit removed from their debt for every day they are incarcerated, which means that the state pays twice for lengthy incarcerations—once for prison costs and once through the credit.

Since 2008 legislation was put into effect, the number of individuals held for more than five days has decreased by 40%. In April 2008, before the new law, 31 individuals were held for more than 5 days for court debt. In April 2009, 15 individuals were held for more than 5 days (10% of all court debt incarcerations).

Disproportionate Racial Impact

Court debt incarceration has a much larger proportional impact on people of color. Although about half of the incarcerated defendants are white, the rate of incarceration for court debt is 7.4

² This calculation uses the estimate \$9/prison bed per day for marginal prison costs and \$125 for the arrest and processing costs (which is equivalent to the warrant fee charged defendants for this process).

times greater for black defendants than white defendants and 2.5 times greater for Hispanic defendants than white defendants.

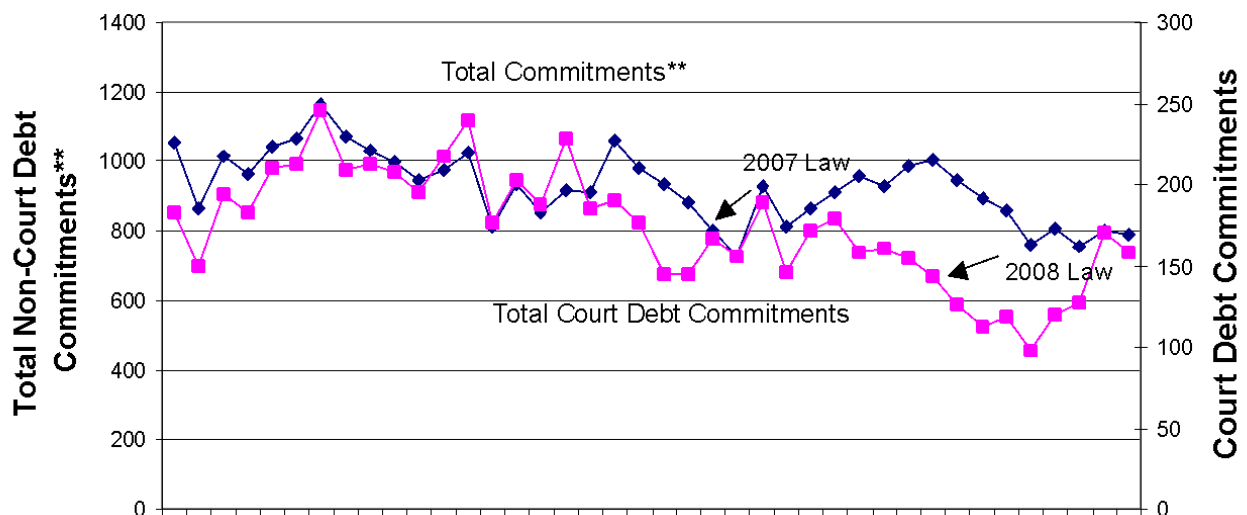
Recommendations

While there have been substantial improvements, this analysis recommends the following continued reforms. Recent increases in court debt incarceration likely resulting from the recession make these particularly important:

- *Hold defendants for less time:* Incarceration beyond several days has not been demonstrated to serve any purpose. These defendants rarely pay bail, cost more to incarcerate, and they receive a credit for each day incarcerated. Records show that some courts are reviewing cases quickly, perhaps in reaction to the 48-hour mandate enacted in 2008, and then making an educated decision to continue holding them. However, some defendants are still held in prison for four or more days before even receiving their statutorily mandated review.
- *Hold Preliminary Ability to Pay Hearings at Presentment:* According to §12-6-7.1 (c) since the 2008 legislation, defendants must be provided with an ability to pay hearing that assesses their ability to pay according to a variety of criteria “at the time of the first court appearance,” the time they are presented based on the new arrest. At that point, for defendants that demonstrate a relative inability to pay, the court should release all holds on the defendant without any payment or, if necessary to demonstrate their compliance with the payment plan, a relatively small payment equivalent to one or two payments.
- *Allow individuals who are arrested to pay a smaller amount of money to be released immediately:* The current system uses very high surety bails, equivalent to the entire outstanding debt. As shown in Figure 3, defendants rarely pay these bails. This prevents most defendants from paying bail, causing the state to lose money twice, as discussed previously. Instead, the courts could choose to release the hold on the defendants, as discussed previously, if they pay the court a portion of their debt, such as the equivalent of two monthly payments.

Commitments for Court Debt 2006-2009

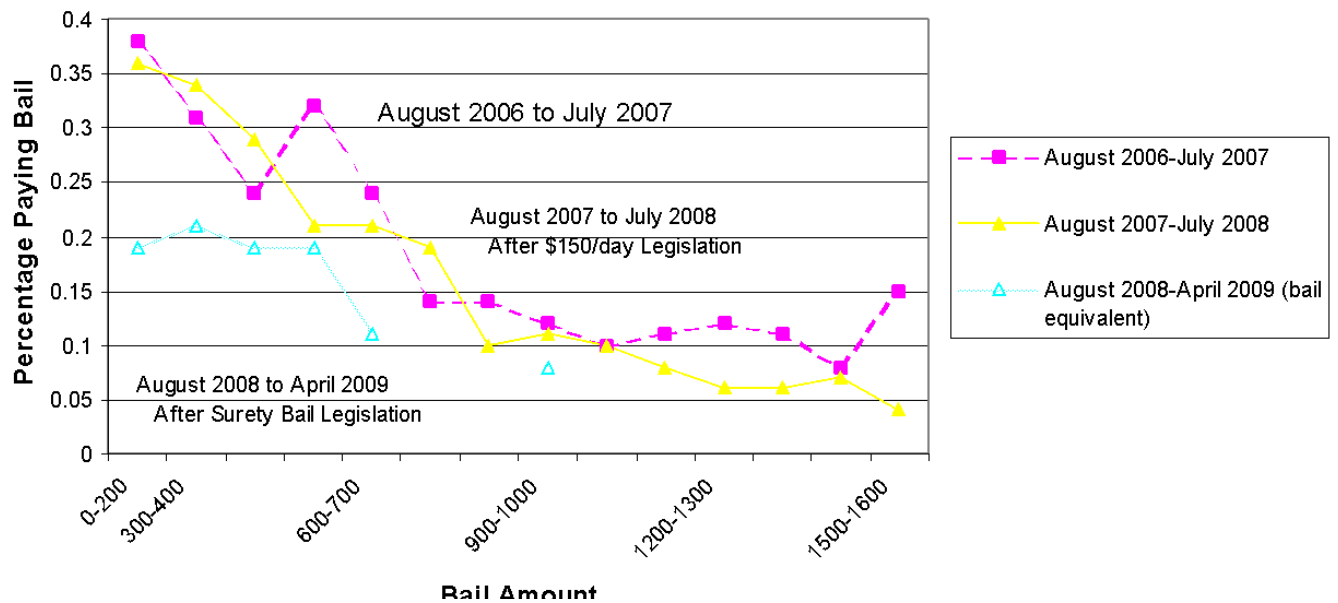
Fig. 2



**The top line represents the total number of non-court debt commitments to jail, which is used as a reference. The bottom line is court debt commitments.

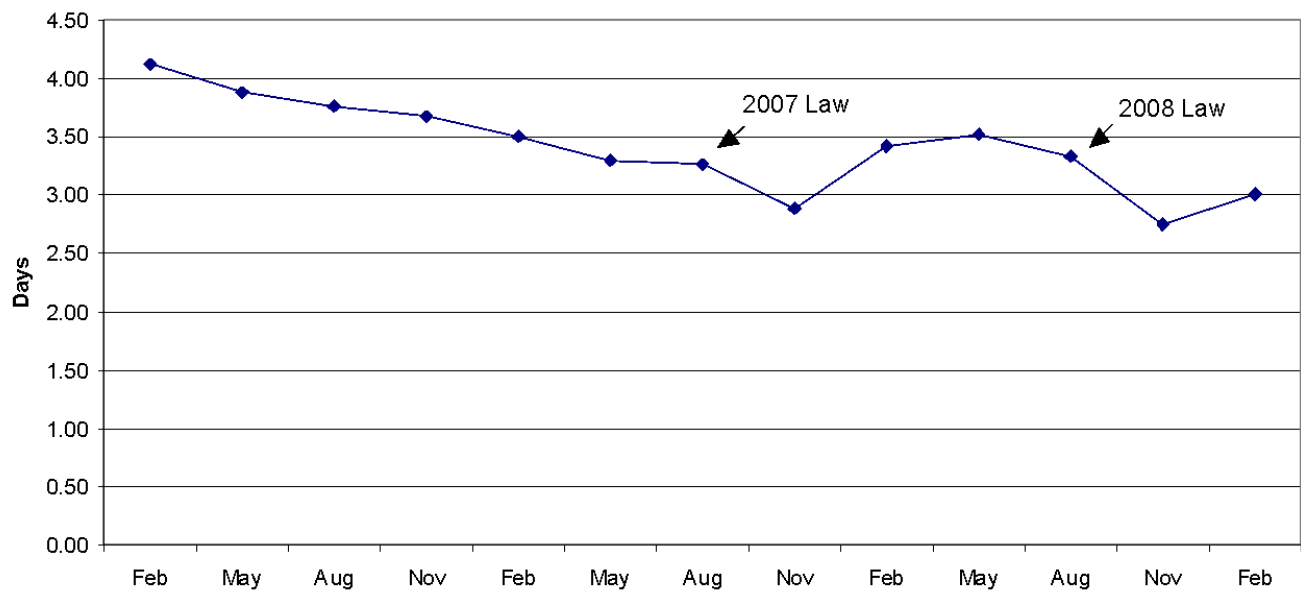
The Percent of Defendants Who Pay Bail v Bail Amount Trends for Three Time Periods

Fig. 3



The X-axis is the bail amount. For the bottom line, the figure shown is 1/10 of the bail, since defendants can pay 10% of surety bail to be released.

Length of Court Debt Incarcerations
Fig. 4



Average length of incarceration for court debt. The data points are three-month averages. Although the average is most recently 3 days, there is considerable variation, and 10% of defendants are still incarcerated for over 5 days.