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## With Liberty and Justice for the Wealthy: The Criminalization of the American Poor

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WITH LIBERTY AND JUSTICE FOR THE WEALTHY:  
THE CRIMINALIZATION OF THE AMERICAN POOR

By

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Health Sciences and Public Policy

Human Rights and Humanitarian Affairs

College of Arts and Sciences

May 2023

Faculty Mentors:

Dr. Julia Reilly, PhD, School of Global Integrative Studies

Dr. Ursula Kreitmair, PhD, Political Science

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An Undergraduate Honors Thesis  
Submitted in Partial Fulfillment of  
University Honors Program Requirements  
And to the College of Arts and Sciences  
University of Nebraska-Lincoln

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## ABSTRACT

The last phrase of the Pledge of Allegiance states “with liberty and justice for all”. However, not everyone has access to this liberty and justice. Liberty and justice can be bought in this country for a price, and those who can’t afford to pay it are often left in the hands of those who can. One of the most prominent ways to see this is by analyzing the criminal justice system. Despite clauses in the Fourteenth Amendment and court cases like *Gideon v. Wainwright (1963)* establishing and upholding that the poor are entitled to equal treatment within the criminal justice system, indigent defendants commonly have these rights violated. Individuals with low incomes or lack of resources face discrimination and worse outcomes in all stages of the criminal justice system. This thesis focuses specifically on how pre-trial detention or release, type of counsel, the plea bargaining process, and past involvements with the system impact poor individuals long after they finish serving their sentence. Based on a literature review of existing research, poverty is a very impactful factor on the experiences and outcomes for individuals in the criminal justice system. How these effects interact with and perpetuate the cycle of poverty are summarized, spillover effects are identified, and changes to the system are recommended.

**Key Words:** criminalization of poverty, criminal justice, criminal justice reform

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## INTRODUCTION

Everyday throughout America, school children stand behind their desks with their right hand firmly placed over their heart and recite the Pledge of Allegiance, the last phrase of which is “with liberty and justice for all”. Having memorized the pledge from a young age, they believe these words and the promises, but the reality is that many of them may not grow up and fully live out these privileges. The reality is that the poverty rate in America during the year 2021 was 11.6%, meaning over 37.9 million people were in poverty on any given day (US Census Bureau, 2023). Poverty is a pressing issue in this country, and so is the criminalization of this poverty by the US criminal justice system (CJS).

The criminalization of poverty is an unjust and illegal phenomenon that has been occurring since the dawn of the CJS, with the truth being that liberty and justice can be bought for a price that many cannot afford. The poor are unjustly targeted prior to any involvement in the CJS, have different access to resources and experiences within the CJS, and have different legal and life outcomes after they leave the system (Karen Dolan & Jodi L. Carr, 2015; Hartley et al., 2010; Rabuy & Kopf, 2016).

A narrative example of this is Gregory White, a homeless man from New Orleans, Louisiana. In 2009 during the aftermath of Hurricane Katrina, he was arrested for stealing \$39 worth of food from a local grocery store. Over the next year, he accumulated \$339 worth of fines relating to this offense, even after his sentence was converted from fees to community service. However, because he was unable to afford the bus fare needed to take him to the community service office, he was assessed additional fines for failing to complete his sentence. In the following years, White was arrested multiple times for other poverty-related offenses, like squatting in an abandoned house. The cycle of him getting arrested, fined, and being unable to

pay the fines resulted in him spending 198 nights in jail. Startlingly, his involvement with the CJS cost New Orleans over \$3,500, all for a case that originated from the desperation of trying to not go hungry and stealing \$39 worth of food (American Civil Liberties Union, 2010).

Gregory White's situation is not unique and is just one example of the criminalization of poverty under the CJS. People in poverty are commonly subjected to a cycle of poverty and incarceration that results in high costs to cities, states, and all parties involved. The purpose of this paper is to show that the criminalization of poverty, despite being illegal and its illegality upheld in countless court decisions, occurs every day all over the country. An extensive literature review of this topic produced a large amount of existing research which was analyzed and served as the basis for this paper. The criminalization of poverty begins before an individual enters the CJS, as they make their way through the CJS, especially in the stages of pre-trial detention or release, the type of counsel they are given, and the plea bargaining process, and continues long after they leave the system. These occurrences are a major mishandling of justice and a failure of the US government to uphold the rights it promises to its people. Therefore, policy changes are needed to right these wrongs.

## DEFINITIONS

Before analyzing the causes, mechanisms, and effects of the criminalization of poverty, a basic understanding of important concepts and definitions is needed. To accomplish this, it is necessary to break down the term "criminalization of poverty". "Criminalization" in this instance is referring to the biases that are held by the CJS that results with those in poverty being unfairly treated by the CJS. If an act is criminalized, it may not always result in criminal justice involvement or penalties, but it does tie the CJS and the act closer together, making CJS

involvement more likely or common (Gustafson, 2009). Many actions, conditions, and situations have been criminalized throughout history, including mental illness, certain sexual identities, and relating to poverty, homelessness, and addiction.

“Poverty” is more difficult to eloquently define. According to the US Department of Health and Human Services, the federal government uses poverty guidelines to determine individuals’ eligibility for certain assistance programs (Poverty Guidelines, n.d.). These poverty guidelines are determined and updated each year by the Census Bureau and represent the amount of money that is needed to be considered above the poverty threshold. These guidelines are broken down by state and by the number of people per household, with more expensive states and households with more people needing more money to not be considered impoverished.

These guidelines are a helpful baseline for determining poverty and needed assistance, but for the purpose of this thesis, will not be used to define poverty for three reasons. First, the poverty guidelines are an oversimplification of poverty. Different individuals and households have varying needs, and therefore require varying amounts of money to be able to provide for these needs. An individual with severe and expensive medical issues needs more money than a one with no outstanding medical conditions. It is therefore inaccurate to define poverty based on these basic guidelines, since the same amount of money means different things for different people. Secondly, poverty guidelines vary by state, and even if using a federal poverty guideline, this poses issues for accurate comparisons. The same individual can be considered impoverished in one state and not in another, so creating nation-wide comparisons and conclusions would be difficult since they would not apply equally to all states. Lastly, incomes of those involved are not commonly included in arrest reports and other documentation, so determining poverty status of those in the CJS based on these guidelines would be impossible. Qualifiers like “homeless”



are sometimes used in these reports so poverty can be assumed, but the exact incomes and earnings are not given. Instead of defining poverty along these lines, it will be defined throughout this thesis as *a financial condition resulting in their needs barely being met, if they are met at all*. Essentially, being impoverished means that an individual is unlikely to be able to afford their basic needs and will not have the additional financial resources necessary to pay for the costs associated with their time in the CJS.

In addition to these definitions, it is also necessary to understand the basics of the United States' CJS. The CJS is incredibly complex and could be the topic of its own thesis in and of itself. These complexities lead to different opinions on the overarching goals and purposes of the CJS. Based on my research into the CJS, I interpret its overarching purposes include protecting society from dangerous individuals, punishing those who break the law, and rehabilitating offenders so that they can become successful members of society. To accomplish these goals, there is a series of thirteen steps in the federal criminal justice process: investigation, charging, initial hearing/arraignment, discovery, plea bargaining, preliminary hearing, pre-trial motions, trial, post-trial motions, sentencing, appeals, incarceration/serving the sentence, and release from incarceration/completing the sentence (Offices of the United States Attorneys, 2014). Although it is not necessary to know the details of every step in the CJS process, a brief overview will be helpful in identifying fundamentally important steps of the process and for visualizing the trickle-down effects of how bias in one stage of the system affects the subsequent stages. Flow charts depicting possible methods of movement for individuals in the CJS are included in Figures 1.1 and 1.2 below, and the actions that occur in each stage are listed in Table 1.1.

Figure 1.1: Pre-trial Processes of the CJS

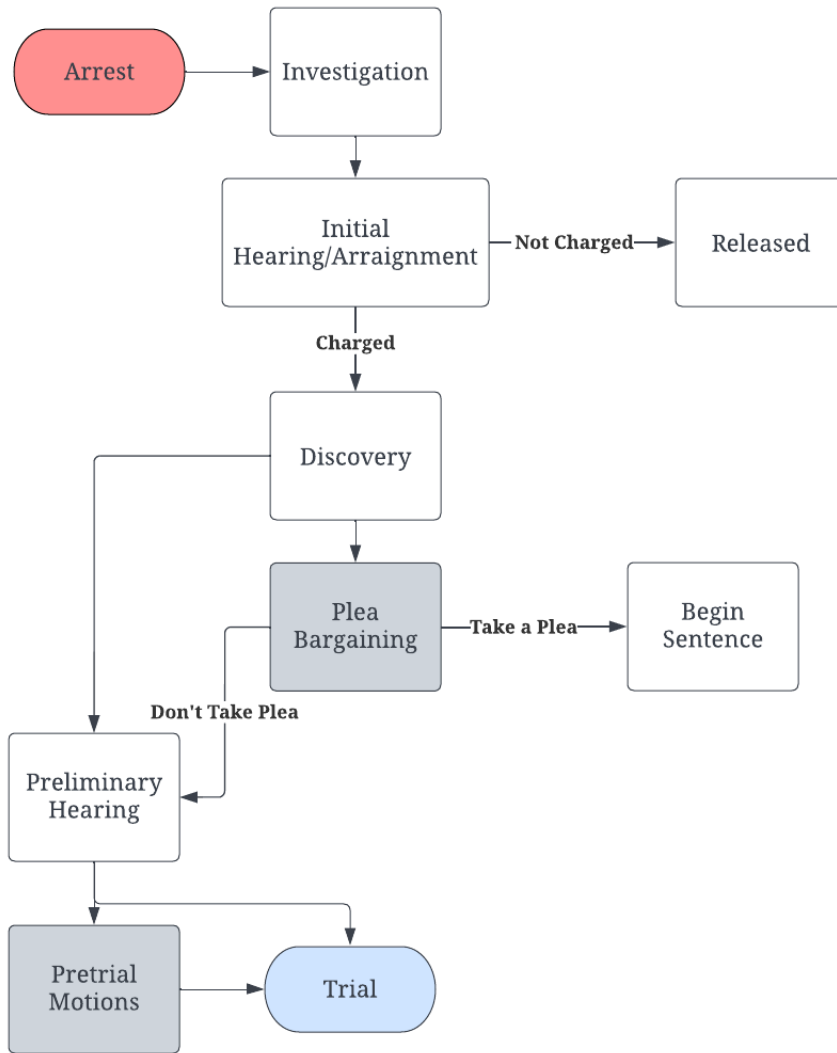


Figure 1.2: Post-trial Processes of the CJS

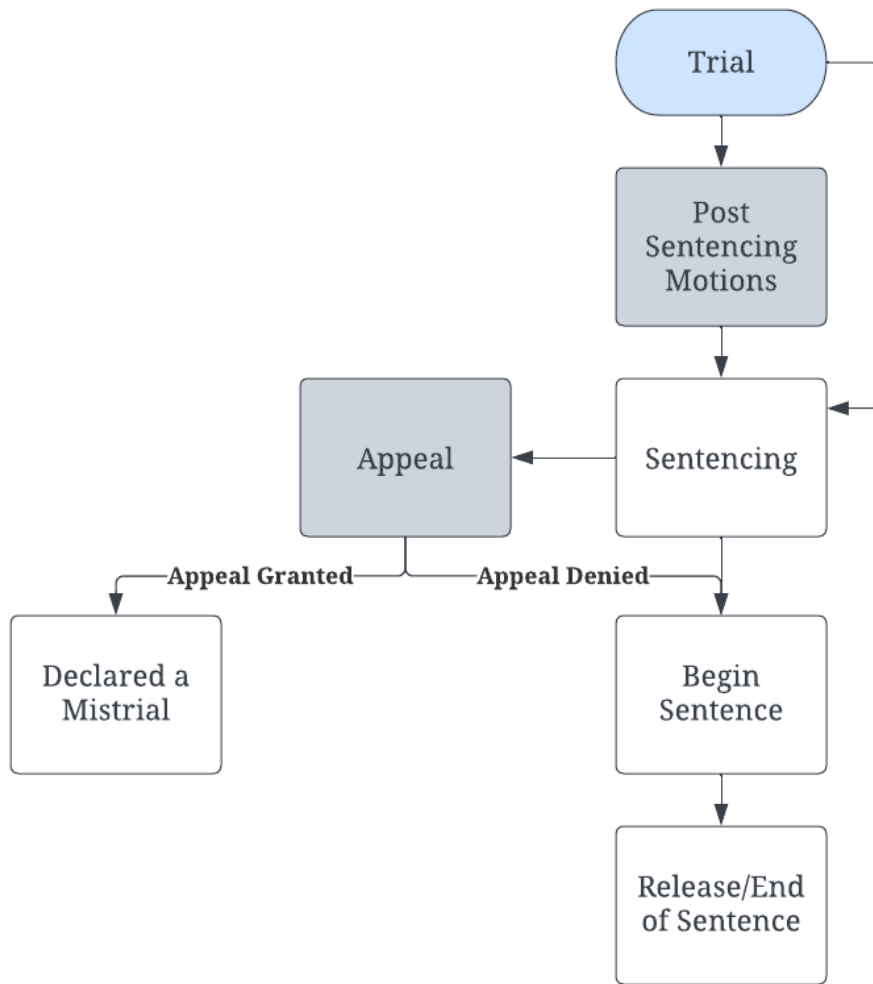


Table 1.1: Actions that Occur During the Stages of the CJS

Steps of CJS		Actions that Occur During this Step
1	Investigation	Investigation of the crime, obtaining of evidence, and helping prosecutors understand the crime; if law enforcement witnessed the crime being committed, they can arrest the suspect.
2	Charging	The suspect is made aware of the charges against them, which may include the use of a grand jury: the prosecutor will present their case to a grand jury and then the jury will decide if the prosecutor has enough evidence to charge the suspect.
3	Initial Discovery/ Arraignment	Defendant is brought before a judge; they learn more about their rights as the accused, the charges against them, arrangements are made for obtaining an attorney, and pre-trial detention is determined.
4	Discovery	Prosecutors share copies of materials, statements, and evidence with the defendant and their defense team.
5	Plea Bargaining	The prosecution determines if they will offer the defendant a plea deal; the defense, working with their client, negotiates the specifics of the plea deal.
6	Preliminary Hearing	<i>Not always required, can be waived by the defendant</i> ; prosecutor attempts to prove to a judge that enough evidence exists to charge the defendant.
7	Pre-trial Motions	Prosecutors and the defense team file motions, or requests that the court make decisions about issues in the case before the trial begins; examples can include motions to suppress certain evidence, motions to change the location of the trial, motions to dismiss the charges, and others.
8	Trial	The trial occurs for the defendant; the prosecution attempts to prove the defendant is guilty of the charges against them beyond a reasonable doubt and the defense attempts to prove them innocent of the charges.
9	Post-trial Motions	Prosecutors or the defense team files motions following the trial of the defendant; examples can include motions for a new trial, motions for judgement of acquittal, motions to vacate, set aside, or correct a sentence, and others.
10	Sentencing	The judge determines what the sentence of the defendant will be.
11	Appeal	<i>Not always required, up to the defendant and their defense team</i> ; the defense team files an appeal to circuit courts if they believe that their defendant was wrongly convicted or given too harsh of a sentence; possible outcomes of appeals include reversing convictions, changing sentences, or ordering a new trial.
12	Incarceration/ Serving the sentence	The defendant serves the sentence that was given to them by the judge during the “sentencing” stage of the CJS.
13	Release from incarceration/ Completion of the sentence	The defendant completes their sentence and is released from the CJS.

(Offices of the United States Attorneys, 2014)

## **BACKGROUND**

### **THE ESTABLISHMENT OF EQUAL PROTECTION AND DUE PROCESS CLAUSES**

Within the CJS, the criminalization of poverty is illegal in the United States according to Section 1 of the Fourteenth Amendment, which establishes the rights to equal protection and due process. The Fourteenth Amendment passed Congress in June of 1866 but wasn't ratified into law until two years later in July of 1868. Its passing directly followed the end of the Civil War and occurred during a period that has been deemed the "Reconstruction Era". In this era, the government had to not only rebuild the country after the ravenous damage and carnage of the Civil War, but also answer to the millions of recently freed slaves and activists that demanded protected and guaranteed civil rights for all Americans. To accomplish this, Congress passed a series of amendments referred to as the Reconstruction Amendments that set to incorporate recently freed slaves into a free and open society and ensure the rights of all people. As just one of three Reconstruction Amendments, the Fourteenth Amendment helped to serve this purpose.

The Fourteenth Amendment contains five sections, the first of which establishes the rights to equal protection and due process. In its entirety, Section 1 of the Fourteenth Amendment reads "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (National Archives, 2021). The establishment of equal protection under the law for all people comes from the last phrase where it says that the State can't deny any citizens within its jurisdictions the rights appointed to them under the Constitution. Also under this section, all

people born or naturalized in the United States were determined to be citizens. This included millions of recently freed Black and African Americans, as well as people of every financial and socioeconomic status. This was the first time in US history that the government and lawmakers fully acknowledged that all people who fell into this new definition of 'citizen', no matter their race or income, were worthy and deserving of the rights in the Constitution that were previously reserved only for White, landowning men.

The due process clause is complementary to and as important as the equal protections clause. Simply put, the right to due process ensured that, if accused of a crime, defendants would be entitled to an equal and fair opportunity to experience the criminal justice process, regardless of individual factors like race, gender, or socioeconomic status. Combined with the equal protection clause, this means that every citizen of the US should have equitable experiences within the CJS, and that the CJS should be enacted and carried out the same way for all people, no matter their statuses or identities.

The due process clause also applies all the previous amendments to the states, not just the federal government. Previously, the amendments had only applied to a select group of citizens at the federal level. This meant that only the federal government could award and protect the rights given in the Constitution. For example, free speech, a right given to citizens under the First Amendment, was only recognized by the federal government. Individual state governments could prosecute or convict individuals for free speech violations because they did not have to recognize the same rights as those at the federal level. However, because of the Fourteenth Amendment and the due process clause, these amendments now rightfully apply to state governments as well.

The incorporation of the amendments to state governments was incredibly important, as several amendments guaranteed rights that were extremely relevant to the CJS and indigent defendants. The first example of this can be seen in the Sixth Amendment, which guarantees the right to counsel, stating “In all criminal prosecutions, the accused shall enjoy the right to... have the Assistance of Counsel for his defense.” (National Archives, 2015). Prior to the Fourteenth Amendment, the right to counsel was only awarded to defendants if they were being prosecuted in federal courts. Defendants in local or state courts had no right to counsel. After the ratification of the Fourteenth Amendment though, this now applied to the states. In summation with the equal protection clause, all citizens, including those who couldn’t afford outside counsel, had the right to have an attorney appointed to their defense according to the Sixth Amendment.

A second amendment that now applied to poor defendants at the state level was the Eighth Amendment. The Eighth Amendment prevents cruel or unusual punishment, including the use of excessive fines as a punishment. However, as will be demonstrated in the literature review below, the excessive use of fines as a tactic for punishment is still occurring throughout the country.

## **METHODS**

### **JUSTIFICATION OF LITERATURE REVIEW**

I decided that a literature review spanning the criminalization of poverty across all steps of the CJS would be the optimal way to analyze and present information for three key reasons. First, there is a plethora of research indicating that being in poverty, and factors closely related to it, increases the likelihood that an individual will be involved in the CJS. Second, focusing on the experiences of individuals in poverty within one step or phase of the CJS does not allow for adequate analysis of the spillover effects that their socioeconomic status can have on their case

outcomes. Lastly, collecting over-arching information about the criminalization of poverty makes it easier to locate issues and gaps in service within the CJS and makes it easier to identify what types of future research and potential policies are needed.

Poverty-related factors that bring individuals into contact with law enforcement and increase their likelihood of involvement with the CJS are well-researched, so conducting an additional research study on these factors would likely not result in any conclusions that haven't been identified already. There are countless articles that have articulated why individuals in poverty are more likely to encounter the CJS compared to those of higher economic statuses, especially those currently experiencing homelessness or those with mental health issues (National Alliance to End Homelessness, 2021; The Recovery Village, 2022). Although there is a large amount of literature on the criminalization of poverty, there are relatively few reviews that summarize findings in relation to the CJS in its entirety. Hence, a review is arguably more beneficial than an additional study in this expansive literature.

Secondly, there are previous sources that have focused on how poverty impacts an individual step of the CJS, and although this is certainly important, it does not recognize how the discrimination in one step of the process affects all subsequent steps. Since the CJS is a series of interconnected processes and decisions, actions or inactions during one stage of the process have monumental impacts in all following stages. By focusing only on one step of the criminal justice process, the spillover effects of discrimination are not fully understood or recognized. A literature review of how poverty impacts all of the stages of the CJS will help solve this problem by allowing for the continuation of differential experiences and outcomes due to poverty to be identified.



Lastly, a literature review allows for more specific and targeted identification of issues and potential lapses in service provisions within the CJS. Identifying these issues will allow for future necessary research into the best methods for fixing them. The more holistically poverty and its impact within the CJS is understood, the easier it will be to create policies and solutions to solve these issues. A prominent example of this is the impact that poverty has on the lives of individuals once they leave the CJS. Not only does the financial status of an individual impact their experiences within the system, but it also affects their livelihoods once they leave it. Being impoverished impacts all aspects of an individual's life and having a criminal record, having experienced incarceration, or having legal involvement only exacerbates the hardships they must endure and work to overcome. As will be discussed more in-depth later, it is common for individuals to "leave" their sentence with large amounts of debt from their incarceration and legal involvements, which only serves to add to their hardships and the barriers that they must face to get re-established in society. A literature review allows for the realization that fees and monetary penalties for individuals in poverty does not help these individuals rehabilitate or 'make up their debt to society'.

## METHODOLOGY OF LITERATURE REVIEW

I began by reading numerous sources about the criminalization of poverty and the steps of the CJS. After establishing a solid understanding of the criminal justice process, I was able to identify key points in the system that were very impactful for the criminalization of poverty: pre-trial detention or release, the type of counsel the defendant has, and the plea bargaining process. Once these steps were identified, I focused on gathering more research relating specifically to these steps of the CJS.

To conduct a systematic literature review on this topic, I utilized databases available to me through my university. I was able to search multiple databases at once using UNL Libraries, which can be found at <https://web-p-ebshost-com.libproxy.unl.edu/>. Academic Search Premier, APA PsychInfo, APA PsychArticles, and Legal Information Resource Center were the databases I searched most often on UNL Libraries. I conducted multiple searches across the weeks and months beginning in June of 2022 to gather all the relevant and applicable research. The main search terms I used were “pretrial release and poor and outcomes”, “public vs private defender and outcomes”, “plea deals and poor”, and “fees from incarceration”. I often alternated between using synonyms of certain words, like “poor” and “indigent” and “poverty” to ensure that I found all the relevant resources. I also conducted more generalized searches like “criminalization of poverty”, “poverty and criminal justice system”, and “poverty and interactions with the justice system”. Depending on the exact terms used, anywhere between 3 and 127 results were found. To narrow the searches and include articles that best served the purpose of this literature review, I chose to read and analyze articles that focused on the long-term consequences of incarceration and those with results and findings that could be applied to criminal justice systems throughout the country. Although articles about one state or county were helpful to gather information about the specifics and how individual systems operate, those that focused on jail or prison populations nationally provided the best information about the reality of the US CJS. To see a complete list of the sources I read as part of the research process, please see Appendix A.

After exhausting Academic Search Premier and APA PsychInfo, I conducted informational searches using Google Scholar, found at <https://scholar.google.com>. While searching with Google Scholar, I used the same search terms as mentioned above. Google

Scholar resulted in a larger number of search results, with a search for “criminalization of poverty” yielding about 50,500 results on October 26th, 2022. With a plethora of accessible information available, limiting searches and choosing relevant articles was even more important at this stage in the research process. To do this, I further specified the search terms I was using in comparison to the searches conducted using databases. For example, I would include the specific stage of the CJS I was looking into by using phrases like “the effect of bail on poor defendants”. I also skimmed the titles and abstracts of the results to decide if they were relevant. To determine relevancy, I looked for studies and reviews that focused on how socioeconomic status, specifically financial status, affected the experiences and outcomes of defendants in their titles. Many studies focus on other and/or additional factors like race and gender, so it was important to my research process that I was able to determine which studies would be useful. If studies included research on another factor besides financial status, I only used the findings and implications that the study found relating to the financial status of the subjects.

After gathering all the relevant articles and information, I organized them based on what phase or step of the CJS they were referring to. I had three large categories: Before the CJS, During the CJS, and After the CJS. Within these categories, I further organized articles using subcategories. Subcategories for the ‘During’ phase included pre-trial detention or release, type of counsel, and plea bargaining. Civil death, fees associated with the CJS, fees associated with incarceration, and the impact of fees on recidivism were the subcategories used for the ‘After’ phase of the CJS. To organize all the sources and information, I created a Microsoft Excel sheet where I placed each source in the appropriate category and subcategory. Based on this organizational process, I was able to analyze each source in a methodological way that allowed me to record my findings in a similar structure. This structure was replicated into how the

following Empirics section was organized. A table of the organizational phases of the CJS I focused on is listed below in Table 1.2.

*Table 1.2: Specific Focuses of Research Within the CJS*

Stage	Sub-stages
I. Before	
II. During	IIa. Pre-trial Detention or Release
	IIb. Type of Counsel
	IIc. Plea Bargaining
III. After	IIIa. Civil Death
	IIIb. Fees Associated with the CJS
	IIIc. Fees Associated with Incarceration
	IIId. Impact on Recidivism

## ANALYSIS

### POSSIBLE WAYS TO CRIMINALIZE POVERTY

Despite court precedents and the rights to equal protection and due process explicitly stated in the Fourteenth Amendment, there are countless ways that the poor have different experiences and outcomes in the United States’ CJS. Discrimination against the poor occurs prior to contact with the CJS, within the individual steps of the CJS, and after release from incarceration or involvement with the system. Poverty, and those who experience it, can be criminalized even before any direct involvement with the CJS. A prominent way that this can be seen is through the policing of homelessness.

Following the criminalization of poverty before ‘official’ entry into the CJS, or the arrest of the defendant, the opportunities for differential treatment of those in poverty, compared to those who are not, increase astronomically. Although the possibilities of discrimination based on income exist in all thirteen steps of the CJS, the literature emphasizes three main phases where financial status has a disproportionate impact on the outcomes of cases: **pre-trial release or being held pre-trial, the type of counsel that the defendant has, and whether the defendant agrees to a plea bargain.**

If the individual is convicted during the trial phase of the CJS, they then face the punishments given to them during the sentencing process. After completing their sentence, they are then free to leave the CJS. However, for those who are impoverished, it is extremely difficult to ever leave the system. The costs associated with incarceration commonly follow individuals for years to come in the form of fees charged for pay-to-stay practices, other common jail services, and civil hardships like difficulties finding employment and securing housing. Even if the individual is not sentenced to serve time, it is highly unlikely that they will walk away from the system without owing any fees or fines to the courts. Fines for the crime in which they were convicted of will still need to be paid, they may owe restitution to those they offended, and they will also be responsible for other fees they accrued with the CJS, like booking fees. For indigent offenders, it is incredibly hard to pay these fines and fees. They commonly struggle to provide for their basic needs, so extra fees relating to the CJS are detrimental to their ability to survive financially and are not costs that they can afford. Wealthier defendants do not face the same challenges because they likely have some disposable income or savings, so they can afford to pay the fees. Even if the fee is the same amount, \$100 to a poor defendant is more impactful than \$100 for a wealthier one, so the poor defendant is considerably more affected than the wealthier

one. Judges are supposed to take the financial status of the offenders into consideration when determining fines, but some crimes and states have pre-determined fines for specific crimes, making it impossible to consider the financial status of the offender. Unpaid fees can, and often do, lead to the reincarceration of these otherwise rehabilitated offenders, creating an endless cycle of poverty to incarceration.

The analysis presented here is structured as follows: I. Before the CJS, II. During the CJS, and III. After the CJS. Within section II, there are sections IIa. Pre-Trial Detention or Release, IIb. Type of Counsel, and IIc. Plea Bargaining. Section III is divided into IIIa. Civil Death, IIIb. Fees Associated with the CJS, IIIc. Fees Associated with Incarceration, and IIId. The Impact of Fees on Recidivism.

## I. BEFORE THE CJS

Homelessness and poverty are often connected since someone who is homeless can't afford a place to stay and is therefore likely to experience poverty. Homelessness itself is not a crime, but there are many ways in which law enforcement can criminalize the behaviors and acts of homeless individuals, including sleeping or resting outdoors, requesting donations or 'begging', jaywalking, or loitering in one place too much (National Alliance to End Homelessness, 2021). Most of these actions are simply characteristics of being homeless and are unavoidable, leading to homeless individuals facing unnecessary harassment from law enforcement over conditions outside of their control. It has been reported that unsheltered homeless individuals are likely to encounter police officers over twenty times during a six-month period, leaving them more prone to citations, arrests, or fines and increasing their potential of being victims of police violence (National Alliance to End Homelessness, 2021). Additionally,

people who have experienced incarceration on more than one occasion are thirteen times more likely than the general public to experience homelessness, creating the opportunity for a homelessness-to-jail cycle (Urban Institute, 2020). The homelessness-jail cycle can be costly and disruptive not only to those involved, but also to cities and taxpayers. For example, one individual stuck in the homelessness-jail cycle can cost the city of Denver, Colorado nearly \$4,000 in just 90 days (Urban Institute, 2020). Over the course of the entire 2014-2015 fiscal year, Los Angeles reported that homelessness was responsible for over \$65 million in jail costs and \$5.6 million in booking fees (Urban Institute, 2020). These large sums of money could go to organizations or charities working to end homelessness, but instead it is being spent on criminalizing it.

Although just one example, the homelessness-jail cycle depicts a prevalent way in which poverty is criminalized. Other ways include the criminalization of mental illnesses and the over policing of low-income communities. There is a multitude of existing literature on these topics, but for the purpose of this thesis, all that is necessary to know is the criminalization of poverty begins before any trials or sentences are enacted. This can begin a cascade of carry-over effects that combine to cause unjust outcomes for those in poverty within the CJS.

## II. WITHIN THE CJS

### IIa: PRE-TRIAL DETENTION OR RELEASE

Whether a defendant is released or detained prior to their trial has significant effects on the outcome of their case and is a large reason why the criminalization of poverty is perpetuated by the CJS. The original purpose of pre-trial detention in America was to ensure that the defendant would return for their trial, but over time, it has expanded to the goals of protecting

society from any crimes that the defendant could commit if they were released (Koepke & Robinson, 2018). The judges in each case can utilize a variety of methods to determine if a defendant can be released pre-trial, including risk assessments, bail schedules, or monetary bail. No matter what method is used however, the overarching goal of the determination should be to “order the least restrictive set of conditions needed to ensure the defendant appears at future court dates and does not harm the community in the meantime” (Koepke & Robinson, 2018).

The new and increasingly stressed focus on predicting how dangerous an individual would be to society if released is conducted using various risk assessment techniques. Although this sounds like it would be both effective and fairer compared to the opinion of the judge alone, this is not always the case. Concerns about risk assessment platforms have included the possibilities of racial prejudice within the assessments, outdated measurement techniques, and the potential of overestimating “dangerousness” (Koepke & Robinson, 2018). Included in these concerns are that they will lead to “zombie predictions”, or that the programs will rely on historical data and not any beneficial and risk-reducing modern bail reforms (Koepke & Robinson, 2018). Despite these issues, pre-trial risk assessments are widely used across the US.

Judges can also use bail schedules to determine if an individual can be released pre-trial. Bail schedules are sets of rules that require certain crimes or charges to have specific and uniform pre-trial release or detention conditions (Koepke & Robinson, 2018). They leave the judge with no discretion in the decision, unless they were to alter the charges to ensure that a defendant is or is not released. Bail schedules are subjected to the same critiques that pre-trial detention is, including that they impact those with lower financial statuses more than those with higher statuses. Poorer defendants, when held in jail awaiting their trials, miss out on work opportunities and time with their families, and have to arrange for their families to be taken care



of, costing them additional money that they don't have. This creates greater strain on their finances compared to someone with savings or additional resources.

The third, and most controversial and inequitable way that judges can determine pre-trial release is through the use of monetary bail. Monetary bail is heavily critiqued and has received many calls for its abolition, and all for good reason. In theory, the judge would assign a bail amount, the defendant would pay this amount, and then if they show up to their future trial, they will have the money they paid as bail returned to them. However, this seldom happens. The average bail amount in the US is equivalent to *eight months of work* for the average detained defendant (Rabuy & Kopf, 2016). Due to this, an estimated 90% of those who are being held pre-trial have qualified for bail, yet aren't able to post it (Stauffer, 2021). Of the population who are unable to post their bail, the median yearly income is only \$15,109, placing them in the poorest one-third of society (Rabuy & Kopf, 2016). Compounding the problem, monetary bail has a history of severe racial prejudice, with the average bail for a Black defendant *being \$7,000 higher* than the average bail for a White defendant (The Marshall Project, 2020).

Since nearly every defendant can't pay their bail amount, the bail bond system (BBS) was created. The BBS serves as a middleman between the governmental system who is demanding bail and the defendants who can't pay it. Monetary bail can be divided into two types, cash bail and surety bail. For cash bail, the monetary bail system functions as it was originally intended: the judge sets a bail amount, the defendant pays 100% of the amount, and if they return to court when they need to, they are given 100% of the amount paid back to them (Rabuy & Kopf, 2016). Since the average defendant is poor and can't afford 100% of their bail amount, the BBS comes into play. Using surety bail bonds, a defendant will pay a bondsman 10% of what their original cash bond amount was. The bondsman will then use the money to

post their bail. However, this amount is never returned to the defendant, even if they attend all of their court dates (Rabuy & Kopf, 2016). If the defendant does not appear for their court dates or is unable to pay back the bondsman, the bond company can sue them for the amount owed. The BBS is an incredibly lucrative industry with a yearly profit of \$2 billion (The Marshall Project, 2020). The BBS preys on poor defendants' inability to post their bail, trapping them in a cycle of debt that they are likely to never escape from. Despite the predatory nature of and often insurmountable costs of the BBS, many defendants turn to it because of the high costs associated with their other option, waiting in jail for their trial.

Being detained pre-trial has impacts beyond those that are financial. Defendants who aren't released pre-trial are more likely to enter plea deals than those who are released, and as will be discussed later, plea deals disproportionately harm poor defendants (Stauffer, 2021). Additionally, the plea deals they take are more severe than those offered to similar defendants who were released pre-trial (The Marshall Project, 2020). If they don't take a plea deal, they may be forced to wear jail attire to their trials, subjecting them to psychological discrimination by juries, since seeing a defendant in a jail or prison jumpsuit has been shown to cause jury members to think of them as guilty based solely on this appearance (Maggie Germano, 2020). Wearing jail attire to trials is also strongly connected to affluence via having effective assistance of counsel, because according to the precedent created by the court case *Estelle v. Williams* (1976), a state can't force a defendant to wear jail or prison clothes to their trials, but it must be objected to in court (*Estelle v. Williams*, 1976). As will be examined in the next section, poor defendants commonly have public defenders who are overworked and may not be able to effectively represent them. If the defendant is not released prior to their trial and has an ineffective public defender, they may experience this discrimination. Not only will these

defendants have to deal with the psychological discrimination of jury members at their trials but being held prior to their trials also makes it more difficult to meet with their attorney and work on their defense (Bibas, 2004).

With the adverse effects of being held pre-trial well established in literature, the only reason to maintain such a system would be if it was highly effective at ensuring defendants show up for their court appearances and don't commit additional crimes if they were released. However, the current system does not fulfill these goals. Of the defendants who are currently awaiting their trials, an additional 25% of them could be released without any increase in pre-trial crime rates (Rabuy & Kopf, 2016). Also, being held pre-trial has been shown to increase recidivism rates, as those who are not released are more likely to commit more crimes after completing their sentence, potentially due to the additional financial hardships their detention cost them (The Marshall Project, 2020). To make matters even worse, since the vast majority of defendants who are awaiting their trials in jail are charged with low-level felonies, misdemeanors, and non-violent drug charges, the amount of time they spend waiting for their trials often exceeds the amount they would receive as their actual sentence (Bibas, 2004).

Monetary bail as it's being used to determine pre-trial detention or release is not only further disabling indigents' ability to receive justice, but is also not satisfying the goals it intended to. Society is not safer thanks to cash bail, but low-income defendants are poorer and have an even smaller possibility of justice under the law because of it. A summary of the effects and outcomes of pre-trial detention and release can be found below, in Table 2.1.

Table 2.1: The Impact of Financial Status on Possible Outcomes in the CJS: Pre-Trial Detention or Release

Pre-Trial Detention or Release	
Pre-Trial Detention	Release
<ul style="list-style-type: none"> <li>• <b>Individuals who are not released pre-trial and are instead detained face worse outcomes in their trials compared to those who are released because they face potential psychological discrimination if judges and jurors see them in jail or prison uniforms (Maggie Germano, 2020).</b></li> <li>• <b>Those in jail have an average median income equaling just 48% of the median income for non-incarcerated people of similar ages and demographics. With such a large proportion of the incarcerated population having low incomes, many of them are not able to pay their required bail bond amount (Prison Policy Initiative, 2016).</b></li> <li>• <b>90% of those in pre-trial detention have qualified for bail but can't financially afford it (Stauffer, 2021).</b></li> <li>• <b>Individuals who are not able to make their bail fall into the poorest one-third of all society (Prison Policy Initiative, 2016).</b></li> <li>• <b>Pre-trial detention can interfere with a defendant's ability to meet with their attorney, affecting their ability to mount an effective defense (Bibas, 2004).</b></li> <li>• <b>A majority of those awaiting trial have been charged with low-level felonies and misdemeanors, and the time they spend detained pre-trial can, and often does, exceed the time they would spend incarcerated for their crime (Bibas, 2004).</b></li> <li>• <b>Pre-trial detention has more significant impact on the poor due to the increased stress they face due to a likely lack of savings for their family members to live on while they are incarcerated and away from work (Stauffer, 2021).</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Those who are released pre-trial can go home to their families, may be able to continue to work, and can await their trials in their homes. Because of this, they are not subjected to the same psychological discrimination that those who are not released face, as they can attend their trials in their own clothes (Maggie Germano, 2020).</b></li> <li>• <b>Being able to pay bail bonds is a large determinant of pre-trial release, resulting in individuals that are wealthy enough to afford their bond amount being released and those that can't being detained pre-trial.</b></li> <li>• <b>Other characteristics that determine pre-trial release are if the defendant is considered a flight risk or a danger to the community, but there are still concerns about racial discrimination within these assessments (The Marshall Project, 2020).</b></li> </ul>

## II.b: TYPE OF COUNSEL

In every cop show, there is almost always a dramatic scene in which the officers heroically capture the criminal and then read them their Miranda Rights, an important aspect of which is the constitutional right to an attorney. This right to an attorney has served as the foundation of the American CJS since 1963 when it was established and recognized due to the monumental U.S. Supreme Court case *Gideon v. Wainwright*. *Gideon* successfully applied the Sixth Amendment of the Constitution to criminal trials at the state level, ensuring that all defendants, regardless of income, had access to an attorney. Going one step further was an equally important yet not as famous case, *Strickland v. Washington (1984)*. In *Strickland*, the U.S. Supreme Court Justices ruled that not only are defendants entitled to counsel, but they are also entitled to *effective* counsel. The standards for effective counsel are the “simple reasonableness under prevailing professional norms”, but generally requires duty of loyalty, duty to avoid conflicts of interest, duty to advocate for the defendant’s cause, duty to consult with the defendant on all important decisions, duty to keep the defendant informed, and the duty to “bring to bear such skill and knowledge as will render the trial a reliable adversarial process” (*Strickland v. Washington, 1984*). The right to effective counsel is fundamental to the US justice system, but the current state of the public defender system in the United States has made receiving effective counsel incredibly difficult, if not completely impossible.

The public defender system (PDS), despite being an integral aspect to promoting and ensuring justice for defendants of all income levels, is crumbling at the seams. Scathing reports have come out in previous decades establishing the stark status of the PDS, which combine to prove that those who utilize the PDS for their defense in criminal trials are not receiving their constitutional right to an effective lawyer. To no fault of the public defenders (PDs), the system

is constructed so they are severely overworked, underpaid, and forced to violate their ethical guidelines as established by the American Bar Association (ABA). The PDS is relevant to the criminalization of poverty because when defendants can't afford to hire their own legal representation, as those in poverty can't, they are appointed a PD. Back in 2010, it was estimated that 80% of criminal cases involved indigent defendants requiring an appointed lawyer, and this number has only increased due to the widening income gap in the US and the increase in total population (Joy, 2010). If the PDS is not capable of providing effective counsel and equal access to due process, then the system is actively contributing to the criminalization of poverty.

Attorneys working in the PDS as PDs or as private lawyers contracted by the government are so severely overworked that they do not have the time to feasibly represent all their clients with the due diligence they are entitled to under the Constitution. The National Advisory Commission on Criminal Justice Standards and Goals guidelines for PD caseloads, which haven't been updated since 1973, state that "the maximum caseload for trial-level public defenders should be no more than 150 felony cases per year, 200 juvenile cases per year, or 400 misdemeanor cases" (Baxter, 2012). However, almost every jurisdiction in the US exceeds these guidelines (Joy, 2010). As an example, even back in 2009, the Office of Legislative Auditor (OLA) in the state of Minnesota found that the average PD across the state had *779 cases* (Baxter, 2012). The Department of Justice also reported that in the same year in Florida, the average caseload for PDs was 500 felony cases and 2,225 misdemeanor cases (Gilna, 2016). The sheer number of cases each PD is responsible for makes it impossible for them to spend an adequate amount of time with each client preparing a defense. An alarming study from the American Civil Liberties Union (ACLU) found that PDs in New Orleans have time to spend an average of just *seven minutes per client*, with other major cities like Detroit and Atlanta faring

slightly better, averaging 32 minutes and 59 minutes, respectively (Gilna, 2016). This minuscule amount of time that PDs can meet with clients virtually guarantees that they are not able to represent them effectively in trials, leading to a phenomenon that has been not-so-lovingly coined “meet ‘em and plead ‘em” (Gilna, 2016). This concept and its ties to plea bargaining is essential to fully understanding and analyzing the spillover effects of the discrimination in each stage of the CJS.

The challenges PDs must overcome to effectively represent their clients aren’t limited to the unfeasibility of their working caseloads; they also must do more work with significantly less resources. The disparity between funding and pay for PDs and prosecutors is monumental. According to the same report stemming from the OLA in Minnesota, prosecutors routinely received 25-35% more funding for each case compared to PDs (Baxter, 2012). Other estimates concluded that for every one dollar spent on prosecuting defendants, only 53 cents was allocated to their defense (Tajmajer, 2021). Additionally, PDs are critically underpaid for the work that is expected of them. Some counties pay contract PDs flat fees, not hourly rates, for every client they represent, and these rates can be as low as \$80 (Baxter, 2012). And to make matters worse, this \$80 fee needs to cover the attorney’s pay *plus* the investigation, expert witnesses, and any other costs of the defense (Baxter, 2012).

PDs that are salaried employees don’t fare much better. According to the popular job search and research website Indeed.com, the average starting salary of PDs in the US is just over \$71,000 per year with highs of \$119,000 and lows and common medians in the high \$40,000s, while lawyers in private law firms average yearly salaries of slightly under \$99,000 and highs well into the \$250,000+ range (*Lawyer Salary in United States*, 2023). Over a decade ago in 2010, the average entry-level salary at a large, private law firm was \$135,000, which adjusted for

inflation, would be \$185,904 in 2023 (Tajmajer, 2021). The difference in salaries compounds the problem of overworked PDs because there are fewer law school graduates who desire a career as a PD. Needing to pay off their average law school debts of a \$182,000, new lawyers simply can't afford to take a job as a PD (Hanson, 2022).

Now let's say that the PD a poor defendant is appointed has the time to meet with them and establish a defense, although this is highly unlikely. In 43 states across the US, the defendant will have to pay a fee to have the PD (Shapiro, 2014). Put another way, if a defendant can't afford to hire a private attorney to represent them, the government can appoint one to them, *but they will be charged for this service*. In some cases, the fees originate from "application fees" that defendants must pay and fill out to request appointed counsel, but some states plainly charge defendants for utilizing the PDS. Additionally, not all states base these fees on the defendant's ability to pay them, meaning that even those who qualify for waivers of other court fees may still have to pay to have a PD. The fees surrounding PD usage are largely aimed at helping the state recoup the costs of the PD programs, but charging indigent defendants for these services is a direct violation of the precedent set by *Gideon*, violates the equal access to due process clauses of the Sixth and Fourteenth Amendments, and contributes to the criminalization of poverty. A summary of the impacts the type of counsel a defendant has on the outcomes for their case is listed below in Table 2.2.

*Table 2.2: The Impact of Financial Status on Possible Outcomes in the CJS: Type of Counsel*

Type of Counsel	
Public	Private
<ul style="list-style-type: none"> <li>Despite it being guaranteed in the Bill of Rights, only 10 states and Washington D.C. provide counsel to individuals at their initial appearance,</li> </ul>	<ul style="list-style-type: none"> <li>Defendants being represented by a private attorneys have an increased likelihood of having their charges</li> </ul>



<p>which is when pre-trial detention decisions are made, and bail amounts are set (Prison Policy Initiative, 2016).</p> <ul style="list-style-type: none"> <li>• <b>Not receiving counsel has stark impacts on pre-trial detention, as those with counsel had median jail stays of two days while unrepresented defendants stayed in jail for an average of nine days (Prison Policy Initiative, 2016).</b></li> <li>• Indigent defendants may take heed of jailhouse rumors or faulty recommendations for lawyers, ultimately hiring or choosing defense based on ill-conceived information (Bibas, 2004).</li> <li>• Jail bondsmen, sheriffs, and other jail personnel may recommend attorneys to poor defendants in exchange for a commission, highlighting a conflict of interest that can disadvantage unknowing defendants (Bibas, 2004).</li> <li>• Less-qualified lawyers are more likely to represent poor defendants (Bibas, 2004).</li> <li>• <b>Public defenders are overworked and underpaid, leaving them with lessened abilities to focus on their clients (Stauffer, 2021).</b></li> </ul>	<p>reduced, no matter if they were detained pre-trial or not (Hartley et al., 2010).</p> <ul style="list-style-type: none"> <li>• Private attorneys have more control over their caseloads compared to public defenders, so they are commonly less overworked and have more time to devote to their clients' cases.</li> <li>• Private attorneys are better paid and often have considerably more resources available to them when compared to public defenders. This means that they can spend more on defense strategies, like expert witnesses.</li> </ul>
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## II.c: PLEA BARGAINING

Plea bargaining is one of the most crucial elements of the United States' CJS. The system does not have enough time or resources to bring every person they charge with crimes to trial, so pleas are heavily relied on to get through the overburdened system. It is so relied on, that *only 2% of federal criminal trials went to court in 2018, and over 97% of individuals currently in prison have taken deals* (Stauffer, 2021). In certain situations, plea bargaining can be a useful

tool in helping defendants and the government both advance their interests: receiving a lesser charge or sentence, getting criminals off the streets, and potentially gaining more information about the crime. Plea bargaining is also a way for guilty defendants to avoid the trial penalty, a phenomenon in which those who go to trial receive harsher and more severe sentences than those who take pleas (Stauffer, 2021). However, the plea bargaining system has been corrupted from its original purposes of serving both defendant and governmental interests and is instead used as a tactic to prevent the collapse of the CJS. As a result, it can further disenfranchise the most vulnerable in the system.

Introduced earlier, the overworked PDS has led to a circumstance known as “meet ‘em and plead ‘em” (Gilna, 2016). The basis of this is that PDs don’t have time to formulate quality defenses with each of their clients, so they highly encourage all of them to take plea deals, regardless of the facts and merits of their case (Gilna, 2016). How little PDs are paid also contributes to this, because although it may be in the best interest of the defendant for their case to go to trial, it is never in the PD’s best financial interest (Gilna, 2016). Indigent defendants are not only more likely to be pressured to take deals by their PDs, but they also often feel like it is their only chance at getting out of the system. Knowing that their PD will not have time to create an effective defense for them, they realize that they will likely be found guilty anyways, so they might as well take the better deal. It is also important to acknowledge that low-income defendants often don’t have the “luxury” of risking a trial. Going to trial requires multiple days in court, meaning they miss out on much needed wages, have to arrange for transportation, and may have to pay for childcare, while they still have a high probability of being found guilty and receiving harsher sentences than what was offered to them in plea deals (Stauffer, 2021). Also, since poorer defendants are less likely to be able to afford their bail and are therefore commonly

detained prior to their trials, taking a plea deal is often viewed as the chance to finally go home (Stauffer, 2021). Individuals in poverty are also less likely to take financial risks, according to psychological research (Stauffer, 2021). Poverty has even been linked to decreased cognitive functioning, indicating that stressing over financial hardships can impede reasoning abilities (Mani et al., 2013). With these considerations in mind, plea bargaining for poor defendants is a forced necessity instead of a choice, and this ‘smoke screen’ of free will for them to decide what to do about their own cases only further entraps them in the CJS.

The effects of taking a plea deal are stark and often not fully explained to defendants for many reasons, including their increased likelihood of having ineffective counsel. When an individual takes a plea deal, they waive their rights to a trial by jury, their rights against self-incrimination, to confront their accusers, to plead “not guilty”, the right to require the prosecution to prove their guilt beyond a reasonable doubt, their right to present any defenses, compel any witnesses, and importantly, they lose their right to appeal (Stauffer, 2021). Consequently, they will also always be considered guilty in the eyes of the law. These considerations were important to the case of Erma Faye Stewart in 2002, who was the subject of a PBS Frontline docuseries that aired in 2004. Stewart was arrested in Hearne, Texas on November 2, 2000, along with 23 other individuals in a drug bust based on the word of a confidential informant. Hearne is a small town in East Texas with a yearly median income of \$20,000. At the time of her arrest, she was living in public housing and off food stamps with her two small children, one of which required expensive medication to manage his asthma. She was appointed a PD, whom she begged to investigate her case and prove her innocence. In an all-too-familiar situation, her PD was overworked and didn’t have the time or resources to invest in or plan a defense, so he encouraged Stewart to take a plea deal. She continued to proclaim her

innocence, but after a week of being held in jail pre-trial, unable to afford her \$70,000 bail and with no one to take care of her children, she eventually took the deal and pled guilty. Her deal included 10 years of probation, an \$1,800 fine, and monthly check-ins with her parole officer. Not all of those who were arrested alongside her took deals, and they therefore went to trial in February of 2001. In the trials, it was revealed that the testimony of the confidential informant was completely made up, so the charges against those who hadn't made a deal were dismissed. However, since Stewart had pled guilty as part of her plea deal, her charges were upheld. Because of her charges, she lost access to public housing, food stamps, federal grants for education, and her ability to vote until two years after her ten-year probation ends (PBS, 2004). This links closely with the concept of civil death, which will be described further in the next section. Although just one example, Erma Faye Stewart's experience in the CJS and with plea bargaining is not unique for low-income individuals. Her fear and lack of choices led her to take a deal she believed was in her best interest, but had she had access to the resources of an individual with a higher income, she would have been spared the tragic outcomes she instead had to endure. A summary of the impacts of plea bargaining is shown below in Table 2.3.

*Table 2.3: The Impact of Financial Status on Possible Outcomes in the CJS: Plea Bargaining*

Plea Bargaining	
Take a Plea	Proceed to Trial
<ul style="list-style-type: none"> <li>Poor defendants may be more likely to take plea deals because they are less likely to be released pre-trial, setting the “norm” as incarceration, making plea deals appear as “wins” or “gains” (Bibas, 2004).</li> <li><b>Lawyers with flat fees, low hourly pay, or hourly pay caps may push their defendants to take plea deals since they will receive the same pay regardless but have more free</b></li> </ul>	<ul style="list-style-type: none"> <li>Defendants who are not poor do not face the same financial and psychological pressures to accept a plea deal. As a result, they may be more willing to proceed to trial.</li> <li>Defendants are less likely to take a plea deal if they can await their trials in their own homes, which richer defendants are more likely to do since</li> </ul>

<p><b>time if they do not have to try a case (Bibas, 2004).</b></p> <ul style="list-style-type: none"> <li>• The overall costs of a trial can push a poor defendant to take a plea deal. The costs of the actual trial are covered by the state, but other costs including pre-trial detention and the trial penalty all impact the overall “cost” of a trial to a defendant (Stauffer, 2021).</li> <li>• <b>Since poor defendants are less likely to be able to afford their bail and be released pre-trial, they can be more willing to take a plea deal so that they can return to their homes (Stauffer, 2021).</b></li> <li>• The trial penalty disproportionately impacts the poor’s decision in plea bargaining. They have more at risk if they face longer sentences, and this risk alone can prompt them to take a deal (Stauffer, 2021).</li> <li>• <b>Indirect costs of going to trial, like arranging transportation, paying for childcare, and taking off work, all have larger impacts on those who are poor, influencing their decision to make a plea deal (Stauffer, 2021).</b></li> <li>• Poverty affects cognitive brain functioning, including decision making. Those in poverty are less likely than their non-poor counterparts to take risks, resulting in them being more likely to take the “safety” provided to them by a plea deal (Stauffer, 2021).</li> </ul>	<p>they can afford to pay bail (Stauffer, 2021).</p> <ul style="list-style-type: none"> <li>• Wealthier defendants can also be less likely to take a deal since they are commonly able to hire private counsel, making them more confident in their defense and less worried about the trial penalty.</li> </ul>
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III. AFTER CONTACT WITH THE CJS

IIIa. CIVIL DEATH

Like all other aspects of the CJS, leaving the system is not as straightforward or as easy as it is made out to be, especially if the defendant is poor. After being subjected to the methods of financial discrimination already explained, the poor face an entirely new slew of hardships upon their exit from the system and re-entry into society. The impacts of past involvements with the CJS extend well beyond the end of the defendant’s sentence, and places both non-financial

and financial burdens on defendants that have already been beaten down by the unjust system. Many individuals leave the system owing considerable sums of money to the government regarding aspects of their sentences and system involvement, and even if they don't owe any money directly, they will continue to pay the price for their time in the system for years, and perhaps even generations, to come.

After serving their sentence, indigent defendants still have the uphill battle of rejoining society, which is made significantly harder by their past connections to the CJS. Even if they don't directly owe the state money from fees or fines assessed to them for their sentence, they are still vulnerable to "civil death". Civil death refers to the loss of privileges and rights that defendants experience because of their history of involvement with the CJS (Friedman, 2021). Example outcomes of civil death can include the loss of voting privileges, their driver's license, access to food stamps and other forms of welfare support, loss of public housing vouchers, and increased difficulties finding jobs and appropriate housing (Friedman, 2021). For example, an individual in poverty may qualify for a Section 8 housing voucher, a welfare benefit that provides them with opportunities for affordable housing. Having a criminal record, however, would invalidate their voucher and remove them from the welfare program. This consequence of civil death is more impactful for poor defendants since they require these vouchers to be able to afford their housing. For defendants who entered the system poor, their lives will only be more difficult to rebuild after leaving the system, as they now have two disadvantaged statuses with impacts and difficulties that only compound each other. Losing access to these services, which are vital to low-income individuals' survival and functioning in society, can lead to further involvements with the system and increased financial hardships.

### IIIb. FEES ASSOCIATED WITH THE CJS

Even if a defendant can pay their bail and avoids jail time as a sentence, they will still likely face fees associated with the CJS. As mentioned earlier, 43 states currently charge defendants who can't afford to hire a lawyer a fee to have a public defender, and some states even make defendants who are found guilty pay prosecution fees (Shapiro, 2014). There are also charging fees, booking fees, administrative fees, fees for processing checks, notary service fees, and photocopying fees (Krauth et al., 2005). Sentences that don't include jail time are also unlikely to protect individuals from avoiding punitive fees. Many states charge daily rates for electronic monitoring, which is commonly used in probation and house arrest, at a rate of \$20 per day (Krauth et al., 2005).

### IIIc. FEES ASSOCIATED WITH INCARCERATION

As mentioned above, countless defendants leave their sentences and the CJS owing significant amounts in fines and fees. A defendant sentenced to jail time is subjected to a variety of monetary fees in addition to the actual time they have to serve in jail, essentially giving them two forms of punishment. In jails, individuals are commonly charged fees for health services and medical care, using jail phones, participating in work release programs, getting their hair cut, and most shockingly, even for their "room and board" in the jail. These fees can add up very quickly, leaving defendants hundreds or thousands of dollars in debt after their sentence is over. A reported 59% of jails in the US charge for medical services, and the most common fee amount for barber services is \$10 per visit (Krauth et al., 2005). Meals in jails will also cost defendants and average of \$2 per day (Krauth et al., 2005). Additionally, 49 out of the 50 states in the US charge defendants a daily rate for staying in jails, commonly referred to as "pay-to-stay fees"

(Schumann, 2020). Pay-to-stay fees typically range from \$1-\$60 a day, but the most reported amount was \$20 per day (Krauth et al., 2005). Fees can also extend well past these ranges, and the city of Riverside, California charges jailed defendants an astounding \$142 per day they spend in jail (Rabuy & Kopf, 2016). Based on these numbers, a defendant who spent five years in jail would leave with a debt of \$36,500 based on the common rate of \$20 per day. In Riverside, California, *a five-year sentence would cost \$259,150*. This is a large sum of money for anyone, but for low-income defendants, it is unfathomable because they are highly unlikely to ever be able to pay it off. Jails do commonly offer work release programs to those who qualify, but 58% of jails that have these programs charge the inmates to use them (Krauth et al., 2005). The charges can take the form of a flat, daily fee to use the program, a percentage of the total income earned by the inmate, and even as limits on how much they can earn each day. No matter what form the fees take, they severely limit how much inmates can earn while serving their mandated sentence, and significantly harm any hopes they have of being able to afford their fees. Additionally, if an inmate wants to use a communal jail phone to speak with family members or their counsel in the case of an appeal, they will also likely face fees of up to \$1 per minute (Rabuy & Kopf, 2016).

### IIIId. THE IMPACT OF FEES ON RECIDIVISM

If the CJS is going to charge a plethora of fees associated with the process, it would be worthwhile to show that these fees are helping to promote the goals of the system, but the current research surrounding this topic reveals the opposite effect. Of the total amount of fees assessed to those in the CJS, less than 5% are collected by governments (Pager et al., 2022). In the case of Riverside, California charging \$142 of pay-to-stay fees, the government reluctantly admitted that



they have failed to collect over 99% of the fees (Rabuy & Kopf, 2016). Despite states being highly unlikely to see even a dime of what they charge, 48 states have increased the amounts they charge in fees (Shapiro, 2014). In attempt to collect what they are owed, states make use of lawsuits, private collection agencies, wage garnishment, and additional charges if the indebted individuals fail to pay (Schumann, 2020). To make matters worse, legal debts can be subject to high interest rates, further burdening those who are short on money to begin with. The reported interest rate in Washington state for legal financial obligations (LFOs) is 12% (American Civil Liberties Union, 2010).

If an individual can't afford to pay their LFOs and high interest rate payments, they can be re-arrested for contempt of court charges, or charges based on "disobedience of an order of the court" (Legal Information Institute, 2022). This can lead to higher recidivism rates and significantly increased costs to the city. Governments can spend thousands of dollars tracking down and imprisoning those who owe as little as less than \$100 (American Civil Liberties Union, 2010). Not only does this waste resources and make no financial sense, but it resubjects those who have been in the CJS to further punishments and takes away any progress they have made on paying off their fees or resettling into society. The fear of being re-arrested also adds to their already tremendous stress, further pushing them into a cycle of fear and victimization of the CJS. This victimization can even be felt generations into the future because unpaid LFOs can be passed to relatives even after the death of the original debtor (Schumann, 2020). Arresting poor individuals for unpaid debts also compounds the issue of mass incarceration in America. Even back in 2007, when fees relating to CJS charges were less common, 18% of jails in Rhode Island were occupied by those who had outstanding debts (American Civil Liberties Union, 2010). After years of the increased incarceration of those with unpaid LFOs and the increased charging

of CJS fees, there is still no research to indicate this results in any deterrent effect on criminal activity (Pager et al., 2022).

## **CONCLUSION AND DISCUSSION**

### **SPIILLOVER EFFECTS**

Pre-trial detention or release, the type of counsel, and plea bargaining process have significant, compounding, and interactive impacts on the outcomes of criminal justice cases. Defendants with less financial resources fare worse in the CJS when compared to those with more resources at their disposal, which contributes to and perpetuates the criminalization of poverty. Poor defendants are less likely to be able to pay monetary bail, resulting in them awaiting their trials in jail. If they use a bond service to make their bail, they are subjected to severe collection and repayment agencies. Those who are detained prior to their trials are more likely to take plea deals, even if it is not in their best interest, and also face discrimination by juries during their trials (Maggie Germano, 2020). Indigent defendants are also unlikely to be able to afford private counsel, so they use a court-appointed PD. The PDS, however, is critically overworked and underfunded, leaving defendants with ineffective assistance of counsel. PDs, due to their lack of resources and available time to devote to each case, also push their clients to take plea deals, but plea deals can cost the defendants their welfare benefits after they leave the system, further worsening their financial situations. Also, after leaving the system, individuals face barriers to re-entering society in the form of civil death and LFOs. These impacts are unlikely to fully resolve, leaving those withing this cycle subject to continued mistreatment and victimization within the CJS, despite court rulings and federally recognized rights prohibiting discrimination based on financial status.

It is worthy to note that information relating to the criminalization of poverty commonly uses narrative portrayals of the individuals who have experienced it. Although this is highly effective at seeing the real-life consequences of this criminalization and how it affects the rest of their lives, I also believe it would be beneficial to gather more information on the exact numbers of individuals who re-enter the system because of financial reasons relating to past convictions or involvement with the CJS. Based on the numerical and statistical data that is available, it is reasonable to conclude that the financial burden that CJS involvement has on individuals after they leave the system and the negative financial situations of individuals who enter the system are linked, but to what exact extent these two occurrences are connected is unknown. The connection between the end of the CJS and subsequent re-entry can be measured using recidivism rates, but it would be worthwhile to collect more data on this experience. This could be done by asking individuals who re-enter the system if they believe that their past involvements with the system and the financial struggles that it caused them contributed to their re-entry. Although this data would be personal and narrative, it could be gathered and then coded statistically, creating a measure that previously hadn't existed. Collecting and conducting a study of this nature would better allow researchers to know the exact extent that financial struggles had on recidivism rates for poor defendants.

## FAILURES OF THE CJS

From a moral and legal standpoint, the discrimination of poverty is troublesome and worrying. Additionally, it highlights the failures of the current CJS. As stated in the introduction of this thesis, it is my opinion that the main purposes of the CJS should be to protect society from dangerous individuals, punish those who break the law, and rehabilitate inmates so that they can

successfully re-enter society after serving their sentence. The criminalization of poverty occurring within the current CJS does not serve these goals. Poor individuals themselves are not dangerous to other members of society. Their circumstances can place them in closer proximity to dangerous situations, but simply being poor and being dangerous are not always tied together. In fact, homeless individuals and those with mental illness who are more likely than the average population to face poverty are also more likely to be victims of violence, not perpetrators (Meinbresse et al., 2014; Ghiasi et al., 2022). People in poverty or with a less-than-normal amount of financial resources should not be punished for being poor. Although it is not discussed in depth in this thesis, those in poverty are more likely to be involved in the CJS, with the CJS itself also being an expensive process. This compounds the financial difficulties of the indigent who are involved in the system and creates a seemingly endless cycle of CJS involvement and poverty. Similarly, the costs associated with the CJS make it overly and needlessly punitive, not rehabilitative. Indigent individuals commonly leave the CJS with hundreds or thousands of dollars in fines with little to no ability to repay them. This does not set them up for a graceful re-entry into society but instead makes it actively more difficult for them to do so, essentially setting them up for failure. This process is not rehabilitative, it is making their situations worse.

## THE ROLE OF BIAS IN THE CRIMINALIZATION OF POVERTY

The criminalization of poverty can be perpetuated through individual and institutional biases that are upheld by the CJS. Before an individual enters the system, the implicit biases of individuals can influence who and how people enter the CJS. The implicit bias that homeless individuals are dangerous can cause people to report them to law enforcement, involving them with the CJS. Instead of calling law enforcement, treating and viewing homeless individuals as

people who are in need of help and resources by calling shelters or other helping organizations would not only reduce their chances of involvement with the CJS, but also allow them to access the resources that they need. Additionally, after entering the CJS, prosecutors can exercise their prosecutorial discretion when they are deciding whether to charge and how to charge individuals with crimes. The biases of the prosecutors can affect how they make these decisions, but if they can challenge any negative biases they may hold, even implicitly, then less people would enter the cycle of criminalization due to their financial status.

Institutional bias also affects the perpetuation of the criminalization of poverty. Within the CJS, common practices like assessing fees for accessing services, using fines as punishments, and having different treatments based on financial status contribute to the worse outcomes poor defendants face within the system. This results in them having worse experiences after they leave the system. The criminal justice institution must realize that how they apply justice to poor defendants, even if it is the same as how they apply it to richer defendants, has disproportionate effects on their financial wellbeing, further disenfranchising them in society and increasing the amount and severity of bias that they experience.

## POSSIBLE CHANGES TO THE CJS

The failures of the CJS regarding the criminalization of poverty accentuate the need for changes within the system. Based on my research and the issues I have emphasized here, I propose five possible changes: 1) The elimination of monetary bail, 2) Improving the PDS, 3) Removal of excess fees associated with the CJS, 4) Re-defining what constitutes a criminal act, and 5) Improvements to the welfare system with the intent to tackle poverty as a whole.

The elimination of monetary bail would decrease the number of people who await their trials in jail, helping the problems of the criminalization of poverty and mass incarceration. It would also remove the pressure that indigent defendants face to take plea deals, which would allow them more equal access to justice and to assert their right to be presumed innocent. Instead of using monetary bail to determine pre-trial detention or release, assessments should be done to determine if the individual poses a risk to society if they were to be released prior to their trial. There are valid concerns that risk assessments could be discriminatory in nature or lead to “zombie predictions”, or that programs will rely on historical data and not any beneficial and risk-reducing modern bail reforms (Koepke & Robinson, 2018). More research is needed to best create a risk assessment system to avoid these concerns, and I believe that this research should be prioritized by criminal justice researchers in the future.

Improvements to the PDS would increase the effectiveness of counsel that indigent defendants receive. The PDS is complicated and is the focus of numerous well-researched and in-depth articles. Common solutions stated in such articles are to funnel more money into the PDS itself and away from contract attorneys that act as PDs and to remove the fees associated with the PDS (Baxter, 2012). Also, lowering the costs of law school could improve the number of new lawyers who go into the PDS since they then would not be worried about the amount of law school debt they need to pay back. This could increase the number of PDs overall, decreasing the problems of excessive caseloads. The exact impact of lowering the costs of law school attendance on the number of attorneys in the PDS is unknown but would be a worthy and much needed area for future research.

The excessive amount of additional fees for required services in the CJS should be eliminated if the criminalization of poverty is to be stopped. Forcing already indigent defendants

to pay for the services and resources in the CJS creates barriers for individuals to access the justice they are entitled to within the system. Because of these fees, poor defendants may be denied the resources they need and desire and will also leave the CJS after their sentence with additional debts that further burden them financially. In application, these fees, especially the application fee for a PD, directly contradicts the precedent established in *Gideon v. Wainwright* (1963). Since current research has shown that LFO and fees are rarely collected, removing these fees would not be damaging to the system and may actually save it money in reserving resources to focus on actual crimes, not just unpaid fees.

Re-defining what constitutes a criminal act would help decrease the number of people who enter the CJS. Homelessness, loitering, soliciting, and other actions that have the underlying cause of poverty should be reconsidered in in city, state, and federal regulations so that instead of being dealt with by the CJS, welfare or support services are in place and can be given to these individuals. There is also a certain level of individual bias that can affect who is charged with crimes relating to poverty. The potential exists for implicit biases to affect law enforcement and government officials when deciding how to charge for a crime, but challenging these biases could prevent individuals from entering the CJS. Prosecutors have discretion in who and how they charge, and if they were to take into consideration the context of situations more and learn to challenge the implicit biases they may have against the poor, it would help prevent the continuation of the criminalization of poverty. If less people entered the CJS, there is research to suggest that this would decrease the total amount of money spent on welfare services. To research this further, specific laws that can and should be changed must be identified, and programs should be designed for government and CJS workers to educate them on combating their implicit individual biases.

Lastly, and perhaps most significantly, improvements to the welfare system and efforts to eliminate poverty in the United States are vital to dismantling the processes that criminalize poverty. Welfare benefits should not be taken away from individuals who need them just because they have a criminal record. Humanness is not determined by the absence of committing crimes, so welfare benefits should not be based on this criterion either. Especially considering the well-documented issue of the criminalization of poverty by the CJS, basing welfare requirements on having a clean criminal record is dangerous because it would leave many individuals without the resources they desperately need. Certain criminal acts like homelessness originate from deprivation, so reducing or removing this deprivation would also remove the crime. If the United States desires to truly eliminate the criminalization of poverty, it must also eradicate poverty itself.



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