

The Brookings Institution  
The Brookings Cafeteria Podcast  
Fixing bail, fines, and fees in the criminal justice system  
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(MUSIC)

DEWS: Welcome to the Brookings Cafeteria, the podcast about ideas and the experts who have them. I'm Fred Dews.

The share of felony defendants in the criminal justice system who are required to post bail to avoid pre-trial detention is increasing, while the share released without bail is dropping. Simultaneously the amount of time from arrest to adjudication is increasing. These and related factors have significant negative economic impacts on the individuals involved and are linked to increased recidivism. To talk about new research on monetary sanctions and the criminal justice system I'm joined in the Brookings Podcast Network studio today by Jay Shambaugh, the director of the Hamilton Project at Brookings and a senior fellow in Economic Studies.

The Hamilton Project recently had an event on the economics of bail fines and fees in the U.S. criminal justice system and released a set of facts papers and policy briefs on this.

Also on today's show, John Ratliff, fellow and director of policy innovation in the Metropolitan Policy Program, reviews governors' State of the State addresses and their plans for digital innovation.

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Jay, welcome back to the Brookings Cafeteria.

SHAMBAUGH: Thanks for having me.

DEWS: I should add for listeners that they can find all of that research material on the Hamilton Project website. [HamiltonProject.org](http://HamiltonProject.org).

SHAMBAUGH: That's right.

DEWS: A lot of great data there, a lot of charts, nine facts about monetary sanctions

and the criminal justice system. So, let's first talk about what are these monetary sanctions, what are criminal justice debts?

SHAMBAUGH: Sure. So monetary sanctions you can kind of think of three main ways we charge someone, especially if they've been convicted of something. So, you've got fines. You did something wrong, you're convicted of something, you get assessed a fine, that's part of the penalty. We do that in some sense to punish in some sense to discourage people from doing it. You don't speed because you don't want the traffic ticket that carries a fine with it.

Over time, fees have become a much bigger part of the monetary sanctions, so the fees you think of more as a user fee kind of thing that well, you know, to charge you for the fact that we had to process your ticket, there's going to be a fee on top of the fine itself. Those fees have actually gotten much larger to the case where in many cases they outsized the fine itself. So, regardless of how big your fine was, you're paying a very large fee for whatever is taking place.

It can also though be things like fee for just being in court. If you're on parole, you're often charged a monthly fee to charge you for the fact that you have a parole officer who has to keep track of you, if you have an ankle bracelet, depending on the jurisdiction, you might be paying a fee for that, or a fee for when you get drug tested to pay for the drug test. So, there are just lots of ways now that if you're interacting with the criminal justice system, you're paying a fee for, you know, almost everything you're doing.

And then the last kind of main bucket in that group is restitution. So, if you're convicted of a crime that has a victim there is in many cases going to be restitution charge to kind of compensate that victim. Those things all get built together into criminal justice debt where now there's just billions and billions of dollars out there of unpaid criminal justice debt in some cases because these are so large that there are a lot of people who can't pay them.

The other two kinds of monetary sanctions we talk about are bail and asset seizure, so those are a little different in the sense you may not be convicted in the case of bail, you're still innocent, you know. You haven't been proven guilty of anything in the case of asset seizure. The standards are different, so you may not have been convicted of a crime but could still have assets seized as being suspected of being involved in a crime.

DEWS: Now is the imposition of these fines and fees different today than it was in earlier times, and I'm thinking like generations ago?

SHAMBAUGH: Yeah.

DEWS: What's the new thing that's happening now?

SHAMBAUGH: Yeah. So, the shortest answer is on fines in particular. Yes. Just far more people have fines than they used to, even if you just go back a few decades. We went from something like, you know, a quarter of people who were in prison had a fine that they were they were dealing with, to now where it's two thirds. So, it's just we're assessing fines all over the place now, and as I mentioned before the fee side has gone up. If even if not in in frequency, in amounts. That's just the fees that people are paying are increasingly something there's no way they can ever pay back leaving them with these huge lingering criminal justice debts that can last basically forever on them.

And then on the flip side, as you mentioned in the open, the use of bail is also up. We used to release a lot more people on what's referred to as R.O. R, or Release and Recognizance. So it's just, you get arrested, you get processed, and they say, "here is your court date, come back." Today that just happens less. It's now, "if you want to leave prison, you're going to need to pay bail." And so, we went from somewhere around 50 percent of people having cash bail to now closer to three quarters having cash bail, and where the thing that was declining was Release and Recognizance, we kind of always are keeping somewhere around 5 percent of people already, saying you can't get out, we think there's a safety risk or flight risk or something like that. What's really shifted is the bail, and

what was really interesting to me when we did some research, and it is it's across all offenses, right. This is not just that we said, "hey we've looked around and realized we're letting too many violent criminals out on bail," and, or letting them out on reconnaissance and they don't show back up. It's no, it's across every offense regardless of the type of offense. There is more bail used and less Release and Recognizance.

DEWS: Now remind me and remind listeners too, I always get this mixed up in my brain, how does bail work exactly? Because people who are standing before a judge may be accused of a felony crime don't just have five thousand, ten thousand dollars in their pocket to post bail them. Some people do but most people don't.

SHAMBAUGH: Yeah. So, bail in most jurisdictions, almost all jurisdictions, you're going in front of a judge. Often there's a prosecutor. The prosecutor may— or I think always there's a prosecutor, but the prosecutor may recommend bail in many jurisdictions. In others it's just the judge. So, there's certainly variance place to place, but basically you get assigned a bail amount as you said. Very few people have that bail amount in liquid assets. If it's a felony, in particular, the median bail amount for a felony is over ten thousand dollars. Right? So, most people don't have ten thousand dollars liquid. In fact, the median household certainly doesn't have ten thousand dollars liquid. And in fact, lower income households don't even have that much at all in any type of asset. So, what do they do? If you can't just pay the amount, you can go to a commercial bail bonds person in most jurisdictions, and you go to them. And what's really, I think, striking that I think most people don't recognize is that you're paying a 10 percent premium. Usually that premium is non-refundable, so you get arrested for something, mistaken identity, you're totally innocent, you get a fifteen thousand dollar bail, it's a relatively typical felony charge bail signed, if you don't have 15,000 dollars liquid, you might have a house that you own, but you know it would take time to borrow against it or anything like that, you're just a standard household. You could borrow the 15,000 dollars, but you're going to pay 1,500 dollars

upfront to the bail bonds person. You show back up in court, the bail is refunded to the bail bonds person, and you're found innocent. You don't get the 1,500 dollars back. So, in some sense, there's this very large charge to people just for getting swept up in the criminal justice system, not for being guilty, not, not for anything else. It's this big penalty. And as a consequence, there are a lot of people who can't pay it, and therefore they don't get out. They never leave on bail. They're stuck in the entire time before trial.

DEWS: If they do pay it, or if they borrow the money and they but they're shell out 1,500 dollars what did you find about how that affects, you know, their economic outcomes?

SHAMBAUGH: Sure. So, the biggest thing we focused on were the people that get stuck. And for that group there's terrific research by economists Will Dhobi and Crystal Yang who wrote one of the policy proposals for us, and one of the things they did, and they they're able to find causal evidence here, and that's important in trying to figure out you know what really happened, what's the impact of keeping people in prison treat pretrial. And the reason they can't honestly come down to the randomness of the system. Right, so you're arrested, you get assigned a bail judge, if you had been arrested an hour later you might have gotten a different bail judge. Same jurisdiction, same offense, same everything.

What that lets statisticians do is hold constant the offense, the age, the education, of everything about the defendant, so I'm going to compare now two like defendants and just say Person 1 got Judge A, Person 2 got Judge B. Judge B is just harsher, they always assign either a higher bail or denied bail relative to judge, the other judge. And so, because of that, I can say just what was the impact on this one person of having been stuck in jail pre-trial, and what they find are really substantial effects. In fact, for the marginal defendant, kind of the person on the fence, where one judge would have let them out and the other wouldn't, it costs society 50 to 100 thousand dollars for keeping the

person in prison pre-trial, and that's adding up a whole bunch of effects. It's adding up on the one hand it's actually a small portion of that is just the direct cost of housing them in jail. That costs money, obviously, and their lost wages, which also costs some money for that direct period of time.

But the bigger effects come from having stuck them in jail. And what you find is years later, their income is lower, their employment outcomes are lower, and their likelihood, as you mention, of committing a crime later on goes up. And one of the reasons that this looks like it happens is what happens is people plead guilty. Right? So, you're stuck in jail. You're offered a plea deal for time served. The way to get out of jail is to say you're guilty, right? If you say you're innocent you stay in jail for months more waiting for trial. There's this huge incentive for people to plead guilty and get out. In fact, keeping someone in jail pre-trial doesn't increase the amount of jail time they serve after trial, which kind of signals that they're basically pleading to get out. But, once you've got a criminal record in the United States, you're less likely to be employed, you're less likely to have income. And what that then leads to is it basically increases the likelihood that you're involved in crime later on.

DEWS: The recidivism.

SHAMBAUGH: The recidivism side of things. So, keeping people in jail pretrial does stop them from committing a crime during that time that they're in jail, right, at the pre-trial period. But it increases the likelihood later on when, when they roll all these things together, the cost to society of housing, keeping someone in jail are really large—50 to 100 thousand dollars per person. We do it, and, you know, it just as a reminder to everyone, last night in the United States there were probably almost half a million people in jail who had not been convicted of a crime. And 90 percent of whom had been assigned to bail that they couldn't make. And so, we're just talking about a huge number of people where we're making this very costly mistake.

DEWS: You know why that's happening? Why are there so many people in jail who haven't yet been convicted of a crime?

SHAMBAUGH: They can't pay bail. I mean it really comes so when it's, I don't mean to say they've been arrested, but they've been arrested, they're in jail, they've been, as I said, about 90 percent of them had been assigned bail, but they can't make the bail. And what's really now, there's a, there's an argument here that I just want to completely acknowledge, which is some of those people who have been assigned bail the judge didn't want to let out. Right? So, if you do something and I'm worried about you I have, you know, and I don't want you out on the street and I'm a judge, there are two ways I can accomplish that. One is I can deny you bail, the other though is I can assign you a million-dollar bail, knowing that you have no way to marshal those resources. So, it's a little tricky there.

But what you do see, I think the things that are almost most heartbreaking are looking at the small numbers. There have been studies on New York City. New York City has done some reforms. But, if you go back prior to that say, I think the data around 2010 or '12, there were close to 50 percent of the people who spent a week or more in jail, pretrial were on bails less than 500 or 1,000 dollars. So, it's, it's not that a judge meant to keep them, they signed them kind of "Oh you're guilty, you're arrested for this, standard bail is that." But then even at 500 or a thousand dollars, you know, a lot of people just can't make that bail. I think it's always important to remember how disproportionately poor the people who are involved in the criminal justice system are. It's just, it's, it's shocking when you look at the income statistics. Honestly, as an economist, I thought they were wrong when I first started looking at them, I said, "That can't be the average income of the people arrested. That's just that's wrong." And then you look say, no it really is the fact that the average income is really, really low in part because they, you have so many people with zero income who are getting swept up in the system. So, there is just no way they're



paying a thousand dollar bail.

DEWS: In one of your facts it says about bail and how is prohibitively expensive. It's fact number nine, it's that roughly a quarter of the household do not even have four hundred dollars in liquid savings.

SHAMBAUGH: Right. And so, when you think of that, again go back to that premium you'd have to pay to bail bonds person. Right? You might have four hundred dollars, even say, but if your bail is five thousand that's not going to make the 10 percent premium, so you can't get out. And then, there's also just the simple fact that in some cases I think what it comes down to is you might have as a household four hundred dollars. But if one household member gets arrested you probably need the four hundred dollars for something else, whether it's paying rent or something, you may just say we literally can't commit all of our liquid resources to paying the premium for a bail bonds person, and so we can't bail the person out. And I think that's where you see just a lot of people are stuck. And what we've done is we've basically made the decision of whether or not someone can be released pre-trial not a matter of safety or flight risk, but a matter of wealth. And that just feels like a dramatically wrong situation in terms of both morally ethically however you want to think about it. But also, just efficiency-wise, right, we're keeping the wrong people in prison.

DEWS: Can you talk about the research on the racial disparities in the assessment of monetary sanctions? I mean, is it more likely in cities with higher shares of certain kinds of demographics, or what does your research find?

SHAMBAUGH: Yeah, so this is where there are some really startling facts you can find of just that the jurisdictions where the person guilty of a particular offense is more likely to be African American, they draw more fines from that offense relative to how often the offense is being committed. And that jurisdictions with higher African American populations tend to extract more fines and fees on a per capita basis. Again, you can find

that even if you control for the amount of crime taking place in the area, and this gets us to this question of, you know, your listeners may have heard of this in discussion of the Ferguson case where the Department of Justice after Michael Brown was killed in Ferguson. They did an investigation of the policing there, and I think their initial thought was, "Well this is something about use of force and things like that." But what they wound up issuing was a report that was shocking in the extent to which the town of Ferguson just basically funded itself off fines and fees, and not just fines and fees writ large, but funded itself off fines and fees of poor minority residents who are less likely to be able to defend themselves, are less likely to know how to navigate the system, to put up a fight, and it sounds crazy because you think if they're poor, there should be less money in some sense to extract from them. But rich people are very good at not having money extracted from them. Right? You know they're more able to hire a lawyer. And so, as a consequence of that, in these areas with poorer and minority residents it's more likely that the town may choose to fund itself off them from fines and fees.

DEWS: So, extending on that you have some very interesting findings about the degree to which some jurisdictions use fines and fees as a large proportion of their, kind of, general funding for their criminal justice system. Can you talk about that?

SHAMBAUGH: Yeah. So, this is work Michael Makowsky, who wrote a proposal for us, talks about where you can go through and look to see how much of the, as you said, the criminal justice system expenditure. So, your police, your courts, all of that. How much of those expenditures are actually being funded by money coming in from the criminal justice system, and for the typical county or jurisdiction, it's not that large. It's not small, but it's something like 7 percent of their, their overall expenditures in criminal justice. So, it's not funding the whole court system or anything like that. But the outliers are huge, right? The top 5 percent, it's about half, and if you get to the top 1 percent, I think they're actually turning a profit, and that's where it sounds crazy, right? That the criminal justice, your

police, your court system bring in more revenue than go out. Right? And those are the Ferguson's kind of cases, of these ones where in that case you know there were e-mails found where there explicitly saying "hey, you know, we got bad tax revenue from this we need more fines and fees." And were just an open acknowledgement that you have turned your criminal justice system and the officers of the law into effectively revenue raisers, which is, you know, it's not what those people signed up for. Right? You tend to think of people who wouldn't they want to become a police officer. They want to get involved in criminal justice they think there's a certain set of ideals they're moving towards. And yet, in some places what they're really getting stuck doing is a lot of revenue raising, which is, can really undermine trust. It can really be terrible for them and for their own safety in terms of do people view them as someone out there to protect and serve them, or someone who is out there where anytime I interact with a police officer, I might wind up owing a lot of money.

DEWS: There's a finding in this, in this area that an increase in the share of revenues from fees and fines leads to a decrease in the amount of violent crimes cleared.

SHAMBAUGH: Yes.

DEWS: Can you talk about that?

SHAMBAUGH: So that just this basic idea of you're distorting what the system's doing, right? The system can either do what it is charged to do, or it can aim at raising revenue, and the revenue raising can just distort their incentives. There's a famous case, and I may get the city wrong, but there was a place I believe in Tennessee where they were disproportionately arresting cars going south, stopping cars going south. You see I don't know what's the distortion there. Well, it turns out in that area drugs tend to flow north and cash tends to flow south. And if they arrest someone and they're able to seize the cash, right, so not just the fines and fees, but here you get into the asset seizure. In that case, the arresting police department gets the cash, in many cases you have this huge

distortion of incentives where you say, "I don't want to stop someone doing something that's a public safety risk. What I want to stop is someone with a lot of cash involved because that funds my department." And in a time and in the last few decades you have a lot of jurisdictions where there have been huge pressures on budgets. On the one hand, I think partly kind of an anti-tax rhetoric, and on the other hand the Great Recession and lots of economic problems hitting lots of places that has led places to kind of shift to a more revenue raising model, and in some cases, again, I don't want to say all, but it certainly means for those kind of top places. There just were no longer seen criminal justice systems do what they're supposed to be doing. And even the ones where they're trying not to move that way the incentives are just dragging them that direction.

DEWS: We've heard a lot of horror stories in the last few years about these asset seizures. Of people who are completely innocent, but they happen to have a lot of cash in their car for whatever reason. They're going from Point A to Point B, they're moving, they get stopped for some reason and the local police just seize their car, seize their cash. They never get charged, but they can't get it back.

SHAMBAUGH: Yes. So, this is why they are, kind of, asset seizures [are] considered a little different than fines, which is just that the burden of evidence is very different. It's, for a fine you have to be found guilty of something. Asset seizure depending on the jurisdiction you don't, and that's a real problem. And then the other thing being where that money goes. You know, that's one of the proposals that Michael Makowsky has, is actually to change where the money goes. He's arguing basically if instead of letting the arresting, you know, agency keep the money, if it went into a general fund it would at least kind of dampen that, or even better, if you had all the local governments and counties funded up to the state and then rebate it back down per capita, then I don't have an incentive to write more tickets just because my budget's fallen short and that's actually where his original research came from was you could go around and look at

Massachusetts towns that ran into budget trouble issued more tickets. And just things like that you just are clearly saying we have a revenue problem we need the cash and getting away from those incentives. Feels like a pretty important thing.

DEWS: I want to tell listeners that you're referring to a paper from the Hamilton Project called a proposal to end law enforcement as tax apparatus by Michael Makowsky of Clemson University, it's one of three policy proposals that accompany the body of research, and we can talk about some of the other proposals here in a moment. I want to go back to the jurisdictions raising a lot of their criminal justice revenue. I just want to ask one more question. Are these necessarily the largest jurisdictions in the country or do you find them all over the place? You mentioned Ferguson.

SHAMBAUGH: You find them all over the place in many cases. They can wind up being the smaller ones that don't have a tax base, basically. Right? So, if the economic activity that in some ways justified that town or locality being its own jurisdiction has eroded, they in some cases need to find the money somewhere else. I don't want to say that's the only reason you get a huge range of, you know, political motivations or just kind of the way things evolve over time in places is different. So, there's not a simple rule where it is and who it is. I think there's a little bit of a bias that it's a little bit more often the smaller towns because they're the ones that have more trouble raising revenue.

Some people have argued in some ways it suggests these are places that shouldn't exist as jurisdictions that maybe you shouldn't have your own police force and your own courts if you're too small and you can't fund it with taxes. You should be part of the county government where that's how they're all being funded. And so, I think that's really an issue there is just figuring out how you can fund these things?

And just as a last point on that, I think it's also just a philosophical question, right? Should the criminal justice system be a user fee system? Right? Relative to being something that we say this is a public good, you know, public safety is a public good, and

we fund it the way we fund all things that are public goods. You might think of certain roads that only certain people use, and say, "I'm going to put a toll on that and that's going to be a user fee experience," but is it right for public safety to be that? I think that that really does push, you've got to fix the incentives on the one hand, but then there's also this question of is this really the right way to fund, you know, should you have to pay a fee for having been arrested whether you're guilty or not. I think it's something people should think about.

DEWS: Well, I want to ask this question because I hear in my mind, I can imagine people would want it to be asked, the quote unquote "law abiding" citizen might say, "Why should we care about these people? They got arrested for doing something they should pay the fine they should pay the fee they should do the time. I mean who cares?"

SHAMBAUGH: So, I think it's a fair question, right? And I think there are a few reasons across these kind of different types of monetary sanctions. So, first on the case of bail you're not necessarily guilty. You know, we have a system that says innocent until proven guilty. We have a system that sometimes there's a phrase in American jurisprudence where we'll say, you know, we'd rather let nine guilty people go free than jail one innocent person, right, because we want to make sure we're not accidentally jailing innocent people. But when you look at our pre-trial system, we've completely flipped that on its head. You know, when you've got half a million people pre-trial detained every night, and where 90 percent of them, a judge has said it's okay for them to leave jail if they could pay a certain amount of money, that we've completely flipped this idea that it's only the people who are guilty. So, I think bail is one piece where there's a clear argument for reform.

And also, this idea that the research that it's really costly, that you're turning people into criminals almost more than keeping criminals in jail, or at the very least that you're increasing the likelihood that they commit a crime in the future—I shouldn't say turning into

criminals. But, you're making this, in some sense, worse, and there are just big costs to the economy keeping them in prison, disrupting lives, disrupting jobs, disrupting incomes. So, I think, there's that one.

On the fines and fees side, part of it is just a practical matter that people can't pay this money, right? We're giving huge fines and fees. There is some research that suggests when it becomes completely unmanageable it leads people to pay less, that there's just there's no way they're going to pay it back. They're going to have that debt forever. So, why should they even bother to pay any of it? Because there's you know they've got other debts that they have a chance of paying off. So, I think there's that piece too.

And then the last one is sometimes these fines and fees wind up getting people in trouble directly. And so, that's one where you'd say, "we really don't want that." Right? So, if I can't exit my parole, if one of my conditions of parole is meeting my criminal justice debt, I'd just stay on parole for a really long time, because I can never pay it off. And not only that, by staying on parole I probably add fees every month to my criminal justice debt. It doesn't seem like a very efficient way to run our criminal justice system. It's not simply a matter of these people did the crime they need to do the time. You know, in this case, these are people who did the time, they're out, and maybe all the other conditions of parole have been satisfied, except the monetary sanction. It doesn't feel like the right thing. And, in some cases, even can land them back in prison and that's when it starts to seem a little absurd.

DEWS: We have heard in the news a lot lately about criminal justice reform, and the White House was interested in it recently. I you think there was either proposals or I think there were some new laws passed. Can you talk about what the White House and Congress now think the new legislation did about criminal justice reform?

SHAMBAUGH: So criminal justice reform that did just passed most recently, and I'm not going to criticize, it was great that it passed. It was entirely aimed at a different

question. which was sentencing, right? So, it was saying "if you're guilty, how long should you stay in prison?" It wasn't about the fines or fees you would pay, and it wasn't about the pre-trial system. So, that's a really important thing to have tackled. I think there were a lot of inequities that had built up in the system. Some of the most famous ones were the differences between crack and powder cocaine and how that led to racial disparities in sentencing and things like that, and so I think there was an important bill to try to readjust some of the norms around what sentences were. But that doesn't get at any of these issues which are affecting millions and millions of people and in some cases derailing their kind of financial and economic lives.

DEWS: All right. So, on the economics of bail fines and fees you know it wouldn't be Hamilton Project research and analysis without Hamilton Project policy solutions. So, walk us through what some of the policy ideas are that have just come out from the Hamilton Project.

SHAMBAUGH: Sure. So, I guess I'll talk very quickly about the proposal from Michael Makowsky first because I've already mentioned it which is this idea that what you want to do is change the incentives around asset seizure, change the incentives around the fines and fees. And so, what he basically calls for is trying to, on things like asset seizure and the practice, as I mentioned, of the money going directly to the arresting agency. There's one piece of that would have to be federal, because there is a policy of federal equitable sharing it's called. So, if the DEA is involved in an arrest and a local police force is involved in it too, and there's an asset seizure that gets split between the DEA and that local police force. And so, you would need to change the federal law on that front just to not let it go to the local police force or to the DEA and again have a go to general revenue.

The broader proposals are to say, on fines and fees you want the money, as I mentioned, to go up to the state and then get redirected to localities per capita. So, there's



no longer an incentive to say, "hey our budget is short. Let's go write more tickets or let's go look around and find people, you know, walking in the street." Which, you know, is literally what people were getting arrested for in Ferguson, to fund the government and to say you no longer have that incentive, because if you write more tickets, you know, you're not really getting any more money or you're getting some very small sliver based on how many people live in your area. So, I think that's one place where you can see, and Michael Makowsky has one, kind of what he views is, kind of biggest leap forward where he would advocate actually is to say don't just rebate all that money to the localities, but give it back to individuals so that criminal justice becomes completely revenue neutral that you just, you don't take in money this way.

The last thing to mention on this one is, he's quite adamant throughout that you have to include the fees because if you just deal with fines what happens is fees go up to replace them. And so, I think that's an important set of proposals. You can look at the second one kind of related. In between is a proposal by Beth Colgan looking at fines and fees that are too high, and I think her proposal, the shortest way to summarize it is to move closer to what's referred to as a "Day Fines" model. That would be kind of the outreach of what she's hoping for, but which is basically you say, you know, drunk driving, or DUI, is going to count for a certain number of units. Right? And how what you then pay depends on what your daily income is. So, if you're relatively low-income and you're, you're earning a much smaller amount then you're going to pay, you know, it's a hundred dollars a day or something, if you're someone who's much higher income, you might be paying 2,000 dollars a day. And the idea would be to try to save for two reasons: one to, if you're trying to punish people, make the punishment have similar weight to people; the other would be if you're trying to figure out what we can actually recover from people and not sticking people with criminal justice debt indefinitely to try to scale, again scale the punishment appropriately. But the real key to her [proposal] is whether you go all the way to that day

finer model is that you bring in ability to pay into the decision on what a fine, and crucially, what fees people are assessed. And a lot of jurisdictions, the ones that do take into account ability to pay generally don't count the fees. And so, in those jurisdictions the fees have gone up in some ways. So, I think, that's an important one also just to say let's re-norm the base. You know, this isn't if you think of Murkowski is trying to affect the overall incentives of the criminal justice system. This one is more narrowly targeted individuals. Let's make sure your interaction with the criminal justice system doesn't bankrupt you for one small thing that you've done just because you happen to be quite poor and then you get these fees just building up and up and up on top.

They're just absurd stories. You know, the person who steals a two-dollar beer from a deli winds up owing 5,000 dollars because, you know, they get arrested, they can't get out of jail, they never can pay because they were homeless, they can't pay for that, and the fees and fines just keep kind of stockpiling.

And then lastly on bail, the argument there is basically that the evidence says, as I mentioned, we're keeping too many people in pre-trial. We could go back to using Release and Recognizance much, much more in in this proposal by Crystal Yang and Will Dhobi. They basically say you could take a whole range of offenses and just say you don't need to bring the person into jail at all. You write them a citation. You release them on recognizance. And so that we can drastically reduce the number of people in jail that way, which would be better for them, and better for us as society. For more challenging cases where you have either a potentially dangerous individual or more serious cases you might need to use a little bit more of a range of things, whether it's ankle monitors or pre-trial supervision where they have to check in frequently, things like that. But I think an important part of their proposal is to note that there are ways to get people to show up in court. That is much better and much more effective and efficient than keeping them in jail prior to trial. And it's like embarrassingly simple things that people have done tests on,

sending someone a text message the night before their trial date gets them in to show up in court the next day. Rewriting the summons form, and if you've ever seen one, they're often incomprehensible. There are some jurisdictions that have just tested, "what if we rewrote that?" You know, they get someone who actually studies how to present information to individuals, rewrite it in a way that a normal person could understand. So, when you get your summons you know what you're supposed to do, you know where to go, what time who to call if you don't understand who to call, if you can't make it that all that information on there. All of a sudden people show up more and so rather than again house people in jail for no reason. Letting them out and just making sure they show back up turns out to be remarkably effective.

DEWS: Now all of these policy proposals and the nine facts are on the Hamilton Project's website, [HamiltonProject.org](http://HamiltonProject.org). Jay, will the Hamilton Project be doing additional work in the future on criminal justice issues?

SHAMBAUGH: So, we've had a long interest in criminal justice. We've done things on re-entry, we've done things on a range of topics over time, and so I think it's certainly something I would expect us to revisit in part just because it feels like an area where there is policy movement. So, there are jurisdictions who actually have made important policy changes. New Jersey has recently moved to get rid of cash bail and a wide class of cases. So, you have some cases where it's a government decision, legislative in other cases prosecutors have made moves. The Philadelphia D.A. just made a huge decision to say something like 20 percent of cases, they're no longer going to ask for bail. And so, their recommended bail is zero. They just don't think these, you know, minor offenses should require bail, and these really get to the heart of these ones where the standard bail was 500 dollars. The typical person's getting out, that's fine, even if they don't have 500 dollars, they can afford the 50-dollar premium. But then you're keeping some poor people in jail for just no reason. So, they said, "this is silly. We don't need to do this." And they've actually

reduced their pre-trial population substantially as part of that. They don't keep as many people in jail.

And then lastly you had, so that's kind of the policy side, you had legislative, kind of people in positions, and then there have been court cases. So, Harris County, this county where the Dhobi and Yang proposal they show kind of places that disproportionately keep people pre-trial and also based on offenses, and then disproportionately keep people that where there's a racial disparity, and Harris County was kind of off the charts on both.

DEWS: Harris County, Texas?

SHAMBAUGH: Yes. And so, it's not surprising there were court cases there. And it's an interesting case, because not only were there court cases, but it became an election issue. And in fact, the judges that got elected, because their judges were elected there, were swept in on a ballot of people saying, "we're not going to do this anymore. This is crazy." And so, you see some energy around places like that so, I think there's a lot of exciting steps taking place, a lot of interesting things. I think there are some policy steps that would be great if we just took them *en masse*, but they're also kind of rolling out piecemeal across the country.

DEWS: Well, Jay, I want to thank you for taking the time today to talk about this important research and these important policy solutions.

SHAMBAUGH: Well thanks very much for having me.

(MUSIC)

DEWS: And now, here's our Metro Lens segment with John Ratliff.

RATLIFF: Hello, I'm John Ratliff, a fellow and director of policy innovation at the Brookings Metropolitan Policy Program.

2018 saw the election of 20 new governors in the United States—this is the largest incoming class in recent memory. These new governors come to office at time of profound economic change driven in part by new technologies.

The disruptive nature of this change has produced a sense of urgency in all governors, both new and old, and has prompted a great deal of action on policy around the states. Many governors are optimistic about the power of new technologies, especially their capacity to promote productivity and growth; but many also focus on managing the downsides of technology, including the risks to personal and consumer privacy and the growth of the digital divide.

Most governors showcase new proposals and outline their priorities for the year in a major annual speech often called the “State of the State” address. A review of this year’s addresses shows that governors are taking three broad approaches to supporting digital innovation in their states.

The first of these approaches is building stronger innovation ecosystems. The second is using digital technologies to modernize government operations. And the third is expanding innovation infrastructure, most notably broadband.

With respect to building innovation ecosystems, we’ve heard many governors speak of the need to develop their states’ innovation economies in recent years, and we are now hearing many governors speak very specifically about the drivers of innovation in their states. In his address Nevada Governor Steve Sisolak recognized the opportunity created by the concentration of companies in his state by calling Nevada, “ground zero for the Fourth Industrial Revolution that will come with blockchain technology.” South Dakota Governor Kristi Noem spoke of developing “new therapies for human diseases and new crop technologies” because of her state’s deep expertise in agriculture and human health research.

But beyond the specific drivers of innovation, governors are focused on creating conditions that promote collaboration and sharing among key innovation players, especially in the public, private, and research sectors. To this end, New York Governor Andrew Cuomo announced his plans to reestablish the “Innovation NY Network,” and

Arkansas Governor Asa Hutchinson proposed a new private-sector Technology and Innovation Council.

The state executive presiding over the country's most active tech community, California Governor Gavin Newsom, has focused on a very different approach—one that attempts to leverage the innovation economy to benefit state residents. In his State of the State address, the Governor announced that his team would be developing a proposal for what he called a “Data Dividend” that would allow Californians to “share the wealth that is created from their data.” We will have to see exactly what this means, but implementing a policy to compensate consumers for the use of their personal data will arguably be a global first, and certainly reflects new thinking on how the innovation economy can support broadly shared prosperity.

In the second category of activity, many governors embraced the power of new technologies to improve government operations and the delivery of state services. Several governors proposed plans for broad systemic reform. North Dakota Governor Doug Burgum created a shared services organization for the state's IT systems. This alignment of the backend systems of 31 state agencies is reported to have saved more than half a million dollars in hosting costs while also protecting personal information and improving accessibility. The governor's proposed next step is centralizing cybersecurity, which is likely to both substantially enhance security and to lower costs.

Connecticut Governor Ned Lamont announced plans to create what he is calling “the first all-digital government,” including a digital front door—namely, a one-stop-shop for everything that current and prospective residents would need from the state government. On the final approach to innovation, building out the infrastructure of the innovation economy, it is difficult to find a single governor who does not view expanded broadband as a top priority. By our count—and this is a single measure—at least 18 governors highlighted substantial new investments in broadband in their State of the State addresses

this year. This compares with just 6 who mentioned broadband in 2013.

Governors from both political parties and in every region of the country expressed support for broadband investment—and several of their statements stood out. Among them was Missouri Governor Mike Parson who touted a federal investment of \$255 million, supported by an additional \$5 million in state funds, to expand the state’s broadband networks. And a number of governors, most notably South Dakota Governor Kristi Noem and Connecticut Governor Ned Lamont specifically focused on the next phase of emerging technology, namely 5G in this case, signaling their intentions to equip their states with the most modern, most capable, and the fastest infrastructure that will be available.

So, taken as a whole, the governors’ State of the State speeches reflect the challenges facing state leaders as they attempt to balance the efforts to embrace the opportunities of digital innovation while also managing its downsides.

You can find more information about the proposals and initiatives that I mentioned today by visiting our website at [Brookings.edu](https://www.brookings.edu).

(MUSIC)

DEWS: The Brookings Cafeteria Podcast is the product of an amazing team of colleagues, including audio engineer and producer Gaston Reboredo with assistance from Mark Hoelscher. The producers are Chris McKenna and Brennan Hoban. Bill Finan, director of the Brookings Institution Press, does the book interviews. And Eric Abalain provides design and web support. Our intern this semester is Quinn Lukas. Finally, my thanks to Camilo Ramirez and Emily Horne for their guidance and support.

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Until next time, I'm Fred Dews.