

PRETRIAL JUSTICE: PROBLEM & SOLUTION



The Problem

The pretrial system in America is unfair, unsafe and fundamentally incapable of doing its job—maximizing pretrial liberty, appearance in court and public safety. Across the country those with money—regardless of where they got it or their danger to the community or victims—can purchase their freedom while people without money remain in jail pending trial.

While the price of freedom lost by hundreds of thousands of Americans every year is incalculable, the cost of pretrial detention to taxpayers is more than \$14 billion annually. Only a small fraction of those arrested end up in prison and a significant number of those held pretrial in local jails are released once they plead or have been found guilty. We incarcerate them while they are presumed innocent and release them once they are convicted. Fortunately, there are solutions to these challenges.



So how do we fix it?

Risk assessment

gives judges a proven way to focus on the information about people that matters—and avoid those things that don't—when exercising discretion to detain.



Other pretrial solutions

include system reforms, court reminders, and appropriate monitoring.

Quick Facts

- In the U.S., money/poverty—not risk—is the primary factor that determines pretrial detention
- Pretrial incarceration costs the country an estimated \$14 billion each year¹
- Pretrial incarceration accounted for 95% of jail growth from 2000 to 2014—currently 63% of jail inmates are unconvicted, awaiting trial²
- African Americans and Latinos receive higher bail amounts—sometimes twice as high—as white people with identical backgrounds and are subsequently detained pretrial at significantly higher rates³
- Compared to identical people who are released before trial, detained people are convicted more, sentenced to prison more and for longer terms—this feeds mass incarceration⁴
- Many people incarcerated before trial plead guilty—regardless of actual guilt or their chances at trial—simply to go home to their families⁵
- Even short stints of pretrial incarceration lead to an increased likelihood of recidivism⁶

The Solution

Recent change efforts have centered around several key areas that have the greatest positive impact on current challenges, including:

- **Reducing the number of people who are brought to jail** by using strategies such as diverting people with mental health or substance use issues to needed services, increasing the use of citations in lieu of arrest and reclassifying non-violent offenses that currently require custodial arrest;

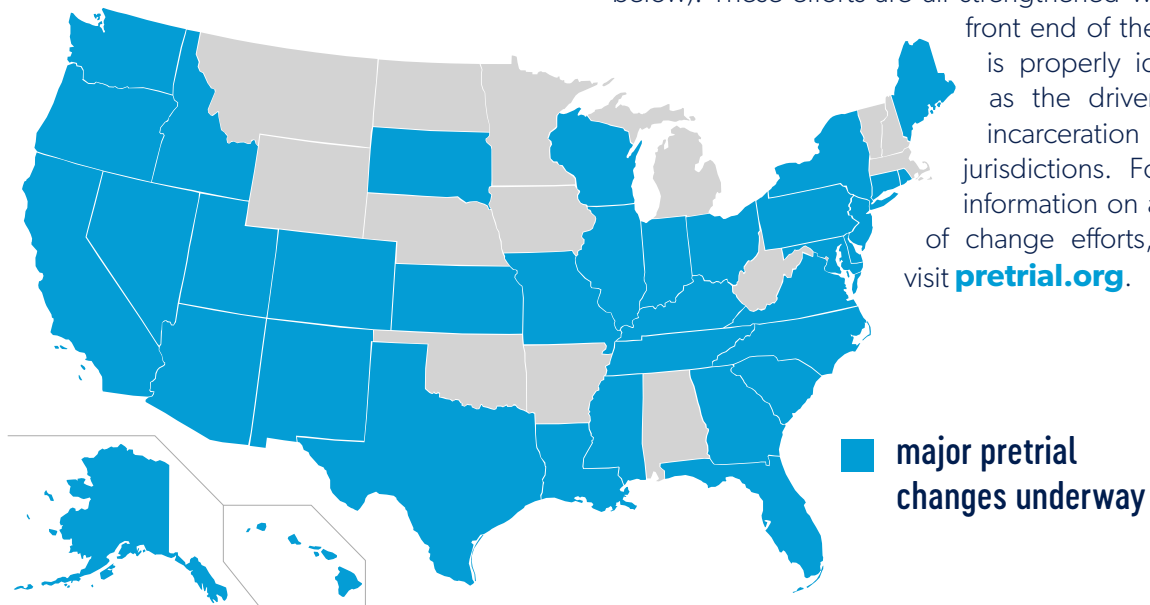
- **Increasing meaningful representation of all arrested people** at the first opportunity where liberty is at stake;
- **Reducing institutionally- and individually-driven racial disparities** in arrest, bail determination and detention through improved data collection and analysis, objective decision-making and other strategies;
- **Replacing money bail** with evidence-based risk assessment and risk-based supervision strategies to inform pretrial detention decisions; and
- **Requiring detention before trial only after a hearing** at which the burden of proof rises to “clear and convincing” evidence that there is no release condition or combination of conditions that would assure public safety or appearance in court.

National Change Efforts & Support

In recent years, national stakeholders have expressed the need for changes to pretrial practices. The Chief Justices from each state, along with the Conference of State Court Administrators, have called for the use of evidence-based risk assessments and the use of non-financial release. Other organizations, such as the National Sheriffs’ Association, the Association of Prosecuting Attorneys, and the National Association of Criminal Defense Lawyers, have called for more systematic information about pretrial risk to be made available to courts. Local stakeholders are embracing and implementing these recommendations and state legislatures are beginning to require evidence-based practices in bail setting.

Major justice system improvement initiatives are underway to address mass incarceration, demographic and economic disparity, and procedural injustice (see map below). These efforts are all strengthened when the

front end of the system is properly identified as the driver of jail incarceration in most jurisdictions. For more information on a variety of change efforts, please visit pretrial.org.



Citations:

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6. Laura and John Arnold Foundation. *Pretrial Criminal Justice Research: Research Summary*. New York, 2013. 6. Federal study validates risk-assessment tool used by Kentucky courts for pretrial release. <http://migration.kentucky.gov/Newsroom/kycourts/NR06202011JB1.htm>. Pretrial Services Agency for the District of Columbia: Research and Evaluation Efforts. https://www.psa.gov/?q=data/research_evaluation_efforts.