

THE SUPREME COURT *of* OHIO

Pretrial Justice ²⁰¹⁹
SUMMIT

Pretrial Justice in America

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**Unconvicted inmates account for
95% of jail growth since 2000. Most
of them are unable to post bail.**

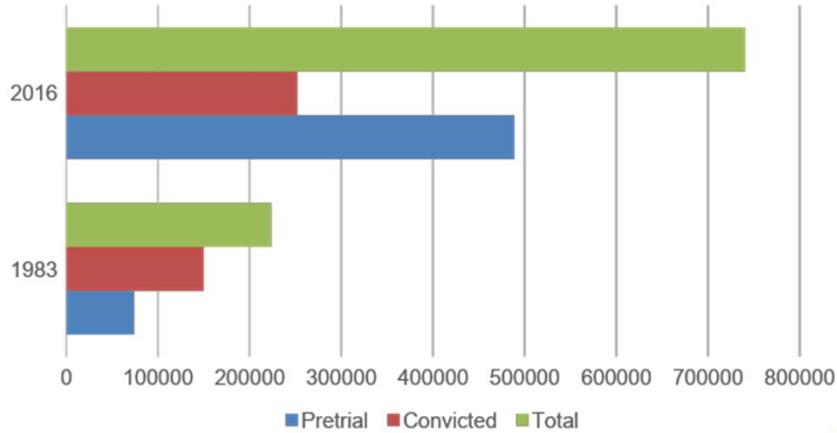


#unconvicted
www.pretrial.org/EndCashBail

Pretrial is the Front Door to Mass Incarceration



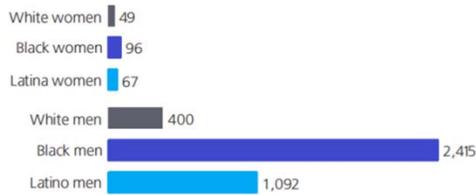
U.S. Jail Population



Inequity is Rampant

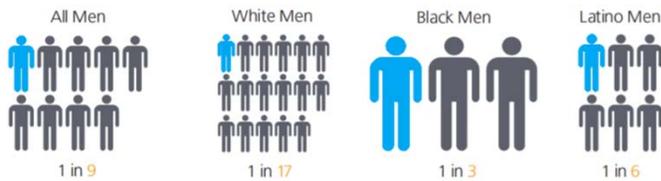


Rate of Imprisonment per 100,000, by Gender, Race, and Ethnicity, 2016



Source: Carson, E.A. (2018). *Prisoners in 2016*. Washington, DC: Bureau of Justice Statistics.

Lifetime Likelihood of Imprisonment of U.S. Residents Born in 2001



Source: The Sentencing Project, 2018

Use of Money Bond



Two 2016 studies re-validated that defendants given money bond of any amount are **more likely** to:

- **Be convicted**
- **Serve longer sentences**
- **Pay higher fines and fees**
- **Be arrested again**

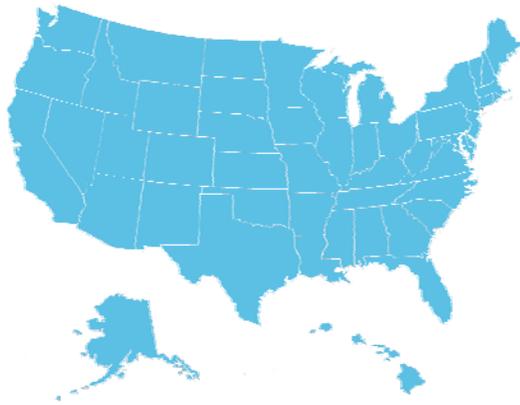
Controlling for other factors, including seriousness of offense.

Pretrial Justice Means...

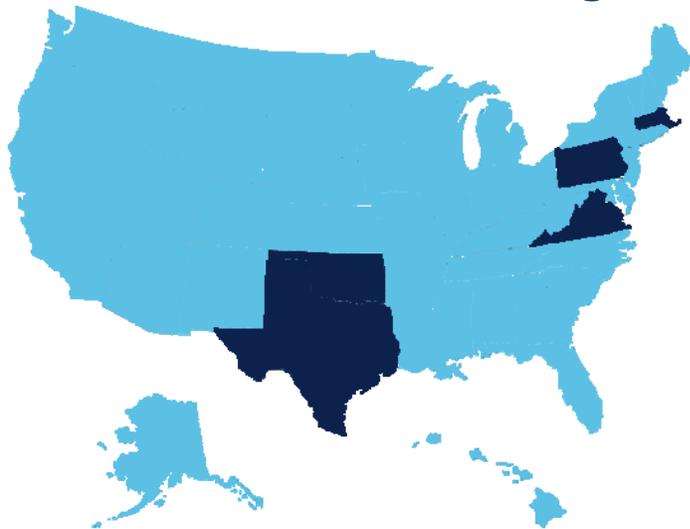


- **Reducing and repairing** harm
 - Focusing on **equity and inclusion**
 - **Reducing** arrests
 - **Decarcerating** our communities
 - **Eliminating** financial conditions
 - State and local **policy transformation**
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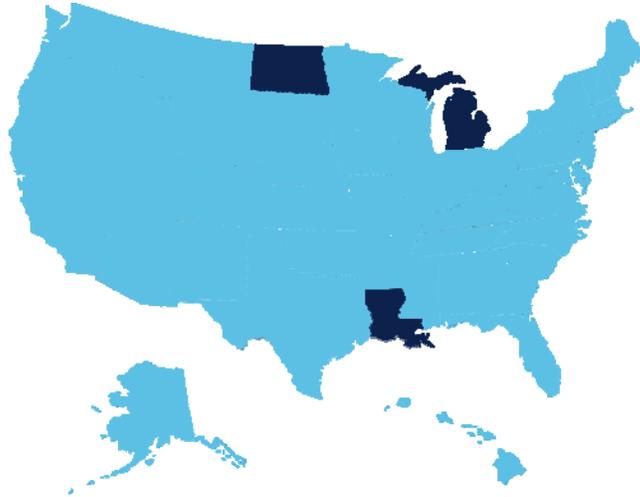
NATIONAL LANDSCAPE



Prosecutor-led Change



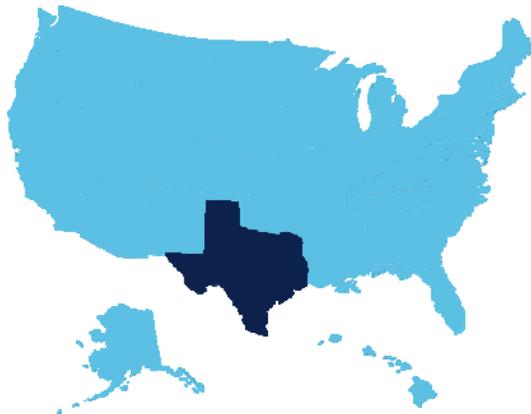
Judicial-led Change



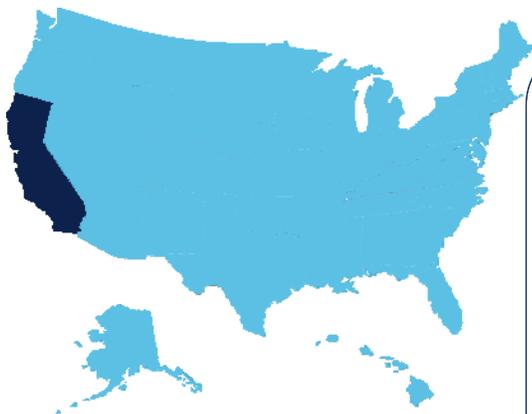
Litigation - Texas



- Pending settlement in **ODonnell v. Harris County**
- New lawsuit filed to challenge felony bail practices
- **Daves v. Dallas County**: wealth-based detention based on application of bond schedule with no inquiry into ability to pay

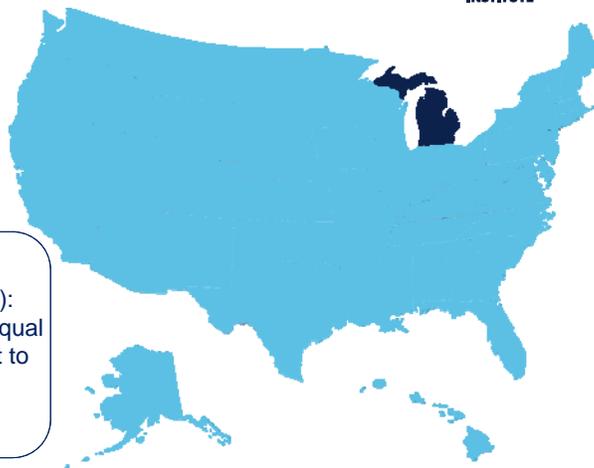


Litigation - California



- **In re Humphrey:** setting bail in an amount one cannot pay is a *sub rosa* detention order lacking due process protections.
- **Buffin v. San Francisco:** bail schedule unconstitutional because it "replaces the presumption of innocence with the presumption of detention."

Litigation - Michigan



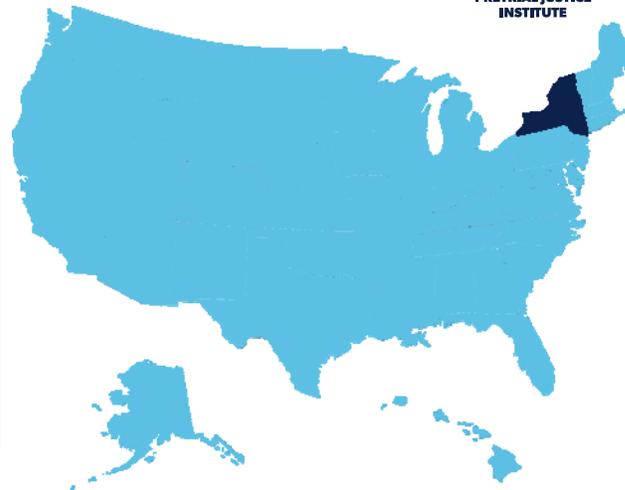
Ross v. Blount (class action):
Detroit bail system violates equal protection, due process, right to counsel

Legislation - Michigan



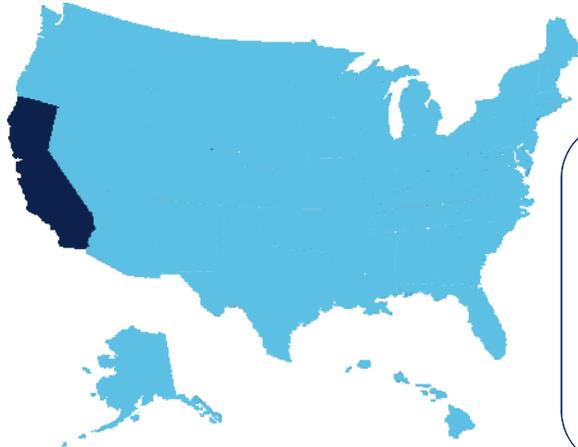
- Presumption of **Release**
- **Forbid** wealth-based detention
- **Increase** citation release
- Require **data** collection

Legislation - New York



- Money bail **eliminated** for most cases
- **Must** consider ability to pay
- **Prohibits** fees
- 48 hour **grace period** for FTA

Legislation - California



SB10: California Money Bail Reform Act:

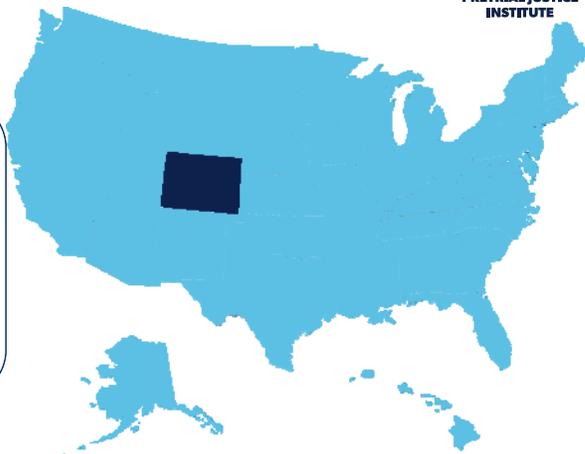
Good! Section on eliminating money bond and \$-for-conditions

Bad! Sections on assessment and preventive detention

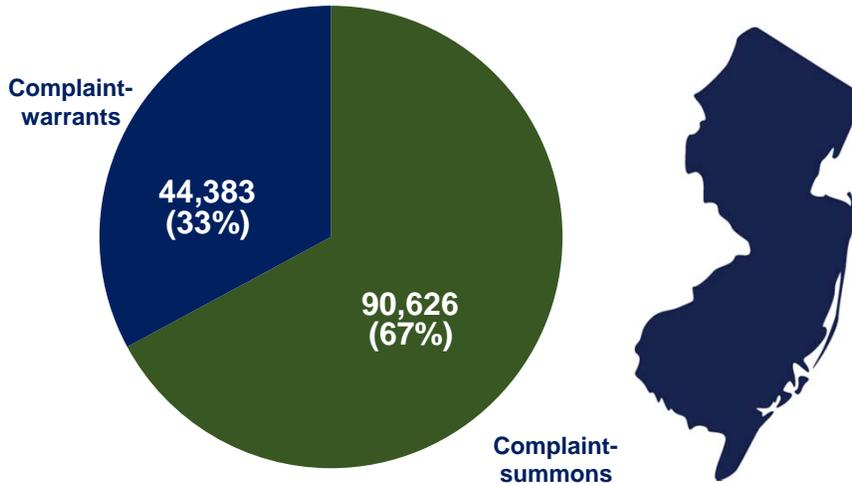
Legislation - Colorado



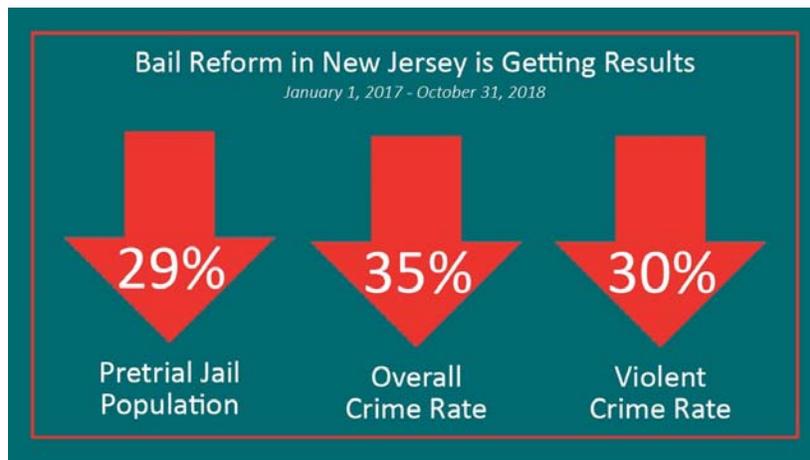
- **Eliminate** bail for low level offenses
- **Expedite** release
- Require statewide **court date reminder** system



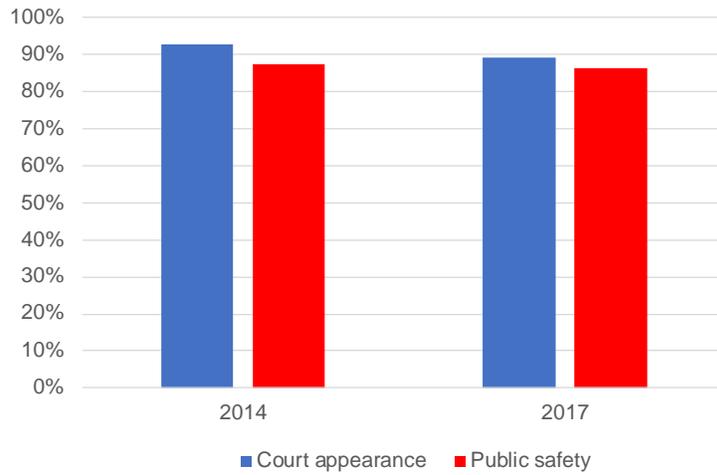
New Jersey – 2018 135,009 criminal cases



Indicators

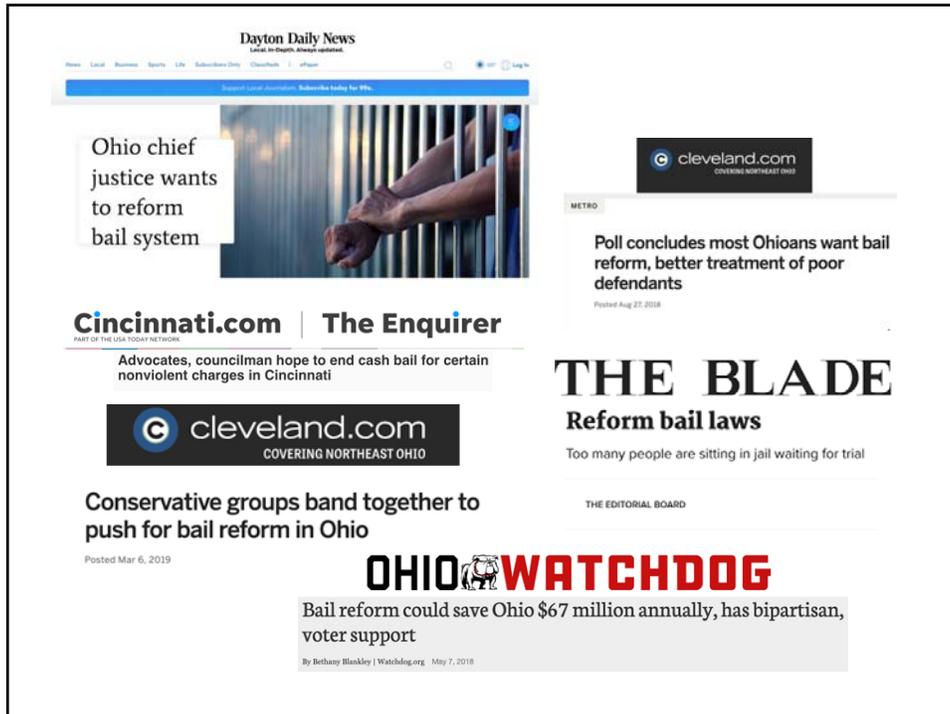


New Jersey – Pretrial Outcomes Before and After



THE CHANGING LANDSCAPE IN OHIO





Ohio Leadership and Advocacy



- Judicial
 - Ad Hoc Committee on Bail and Pretrial Services
 - Supreme Court Task Force to Examine Ohio Bail System
- Advocates and Allies
 - ACLU-Ohio
 - Buckeye Institute

Ohio - Pioneering Deflection



- **Hamilton County**
 - Implementing *LEAD*
 - **Lucas County**
 - *DART* (Drug Abuse Response Team)
 - **Franklin County**
 - Community Intervention and Diversion
 - **Montgomery County**
 - Community Overdose Action Team
-

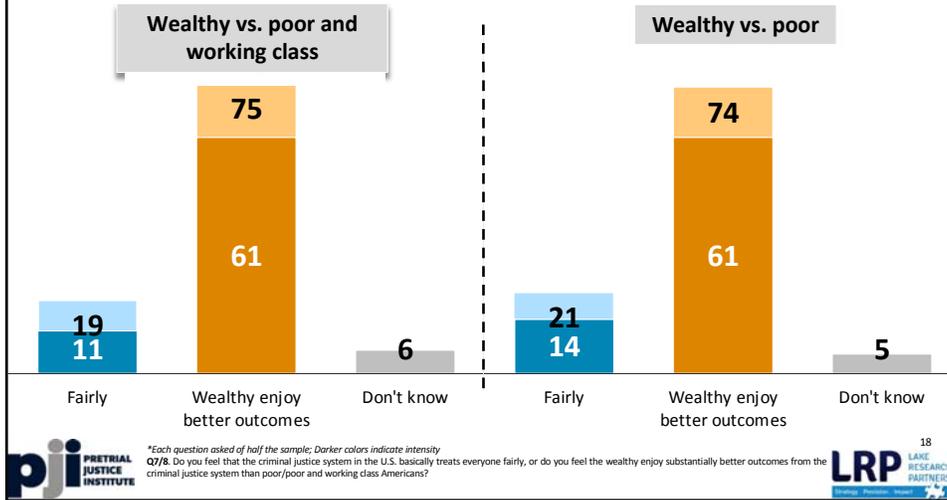
2018 PUBLIC OPINION RESEARCH

Ohio Registered Voters



Regardless of the wording used, and despite their overall positive views of the criminal justice system as a whole, Ohio voters strongly believe that wealthy people enjoy better outcomes in the criminal justice system than poor and working class people.

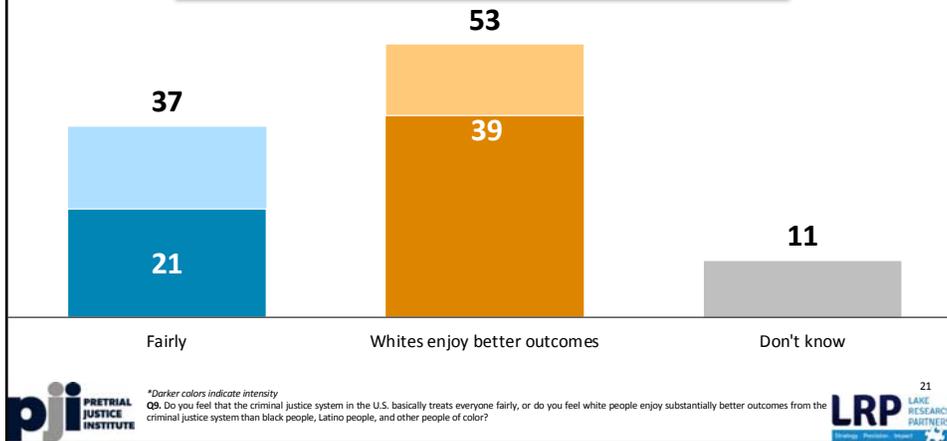
Does the Criminal Justice System treat everyone fairly?



A majority of Ohio voters, including three-fourths of African Americans and nearly half of whites, agree that whites enjoy better outcomes in the criminal justice system than people of color, though by a narrower margin than they do rich versus poor/working class.

	Everyone Fairly	Whites	DK
White	42	47	11
AA	15	75	9

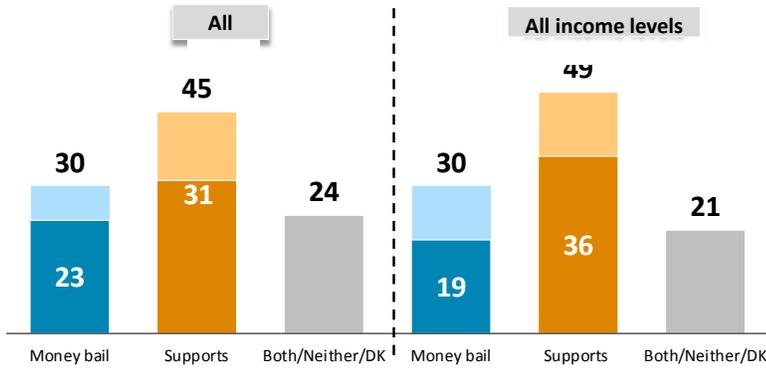
Does the Criminal Justice System treat everyone fairly?
White vs. POC



A plurality of Ohio voters believes that community supports are fairer than money bail when it comes to ensuring fair treatment of all races and income levels. This includes a slim majority of African Americans.

Which system is fairer to...

	Fairer to All Races?		
	Bail	Supports	B/N/DK
White	30	44	26
AA	26	51	23



*Each question asked of half the sample; Darker colors indicate intensity

SSA: Q17. And which do you think is fairer to people of all races [ROTATE] _money bail OR _supports, like court reminders, referrals to services, and supervision?
SSB: Q18. And which do you think is fairer to people of all income levels [ROTATE:] _money bail OR _supports, like court reminders, referrals to services, and supervision?

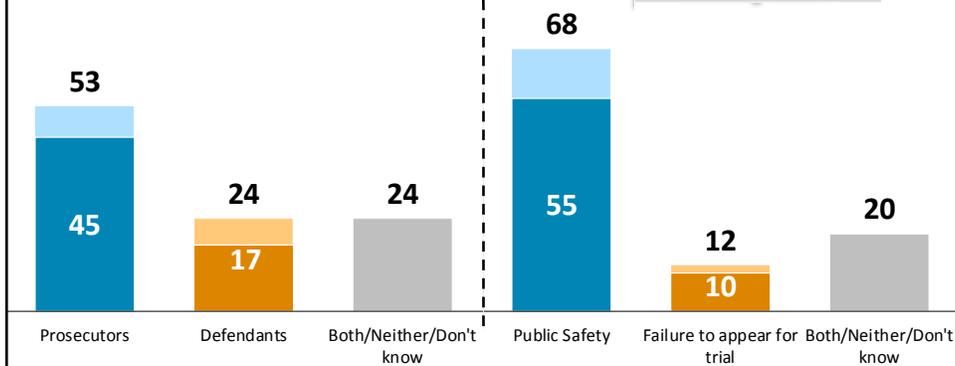


Majorities of Ohio voters believe that prosecutors should make the case for release or detention, not the defendants themselves, and that a public safety assessment should be used to determine release, not a risk assessment of how likely they are to fail to appear in court for their trial.

Deciding Who to Release Pre-Trial

Who should make the case?

Which should be the deciding factor?



*Each question asked of half the sample; Darker colors indicate intensity

SSA: Q11. And when it comes to deciding how to release or not release someone from jail before trial, [ROTATE] _would you rather prosecutors have to make the case to keep someone in jail pretrial OR _would you rather defendants have to make the case that they should be released?
SSB: Q12. And when it comes to deciding how to release or not release someone from jail before trial, which would you rather be the deciding factor [ROTATE] _an assessment of the person that takes into account their risk to public safety OR _an assessment of the person that takes into account their risk of failing to appear in court for trial?



PJI's Roadmap



- Set an **equitable** table
- Review data with an **equity lens**
- Create an **inclusive** vision of justice
 - Narrow preventive detention
 - Community-based supports
- Display and use **data and tools**

PI-Continued...

July 11-12, 2019

Denver, CO

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