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.
Pretrial is the Front Door to Mass Incarceration

U.S. Jail Population

2016

Pretrial Convicted Total

20,000 40,000 60,000 80,000

1983

Pretrial Convicted Total

0 10,000 20,000 30,000 40,000 50,000 60,000 70,000 80,000

Inequity is Rampant

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

White women 49
Black women 96
Latina women 67

White men 400
Black men 2,415
Latino men 1,092

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

All Men 1 in 9
White Men 1 in 17
Black Men 1 in 3
Latino Men 1 in 5

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
Judicial-led Change

- 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 - Texas
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

- 94% release rate
- 0.03% conditions

Complaint-warrants: 44,383 (33%)
Complaint-summons: 90,626 (67%)

Indicators

Bail Reform in New Jersey is Getting Results
January 1, 2017 - October 31, 2018

- Pretrial Jail Population: 29%
- Overall Crime Rate: 35%
- Violent Crime Rate: 30%
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

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**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.

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 then they do rich versus poor/working class.
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.

<table>
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<tr>
<th>Fairer to All Races?</th>
<th>Bail</th>
<th>Supports</th>
<th>B/N/DK</th>
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<tbody>
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<td>44</td>
<td>26</td>
</tr>
<tr>
<td>AA</td>
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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.
PJ I’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**

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**Pi-Continued...**

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Denver, CO

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