

Where Pretrial Improvements Are Happening

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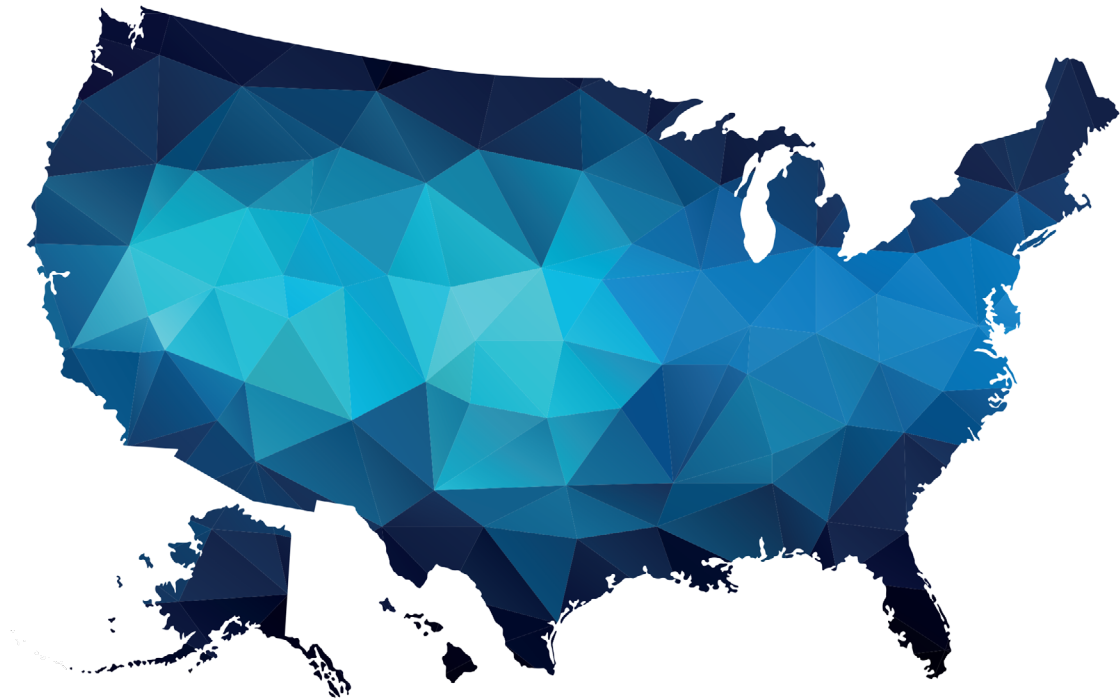


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Introduction

Efforts to improve pretrial justice are underway across the country, from small towns that seek to lower jail populations to bills before Congress that would restrict federal funding for states that continue to rely on money bail. This document is intended to help readers understand the variety of pretrial improvements underway and where they are happening.

It's clear that the train bound for pretrial justice is leaving the station, and more and more states are getting on board as they discover that too many people are being held before trial because they cannot bond out, even though they are likely to appear in court with no new arrests. In 2018, 24 states passed legislation relating to pretrial justice, including a major reform bill (SB 10) in the nation's most populous state, California. Passing legislation is just one step, of course; careful implementation is also needed to realize meaningful and long-lasting pretrial practices that honor fairness, justice, and public safety.

This report offers brief descriptions of a range of work currently happening or recently accomplished and is organized into several main categories: Changing Practice, Judiciary-Led Change, Pretrial Litigation, Pretrial Legislation, Executive Branch-Led Change, and Community & Grassroots-Led Change. A state-by-state table is provided at the end of the document for quick reference.

This publication, updated quarterly by the Pretrial Justice Institute, retains overall information over the course of a calendar year to ensure that this is a complete, standalone resource. New items are labeled after each quarter.

Changing Practice

There are many ways jurisdictions can improve pretrial systems and the outcomes they produce without introducing new laws or amending state constitutions. Simply changing practice within existing legal structures can create immediate and positive results. For example, some jurisdictions have seen success in diverting people with mental health or substance use disorders away from the criminal justice system and into treatment. Other places have chosen to issue non-custodial citations or summonses to people accused of low-level offenses, thus avoiding the harms of unnecessary detention. This section describes that work and more.

Pre-booking Deflection and Diversion

Many jurisdictions are pursuing diversion or deflection projects that keep people away from jail booking when a custodial arrest would be unnecessary or even harmful. The Police, Treatment and Community Collaborative (PTAC) held its [inaugural conference](#) on pretrial arrest diversion in March 2018. The conference agenda included addressing the opioid crisis through pretrial diversion, decriminalizing mental illness, the role of communities in diversion, and creating a trauma-informed workplace.

Prosecutor-led change

Florida State Attorney Aramis Ayala has announced that prosecutors in Orange and Osceola counties will no longer seek bail in low-level offenses, stating that it is a "poverty penalty." The charges where bail will not be sought include driving without a license or vehicle registration; low-level drug crimes, such as possession of drug paraphernalia or fewer than 20 grams of marijuana; as well as disorderly intoxication, panhandling, and loitering.

NEW Rachel Rollins, a federal former prosecutor, won the election for Suffolk County (Massachusetts) District Attorney; she campaigned on a transparent policy whose default response is to decline to prosecute certain low-level, nonviolent crimes. The primary for the Democratic nomination for Suffolk County (**Massachusetts**) District Attorney (DA) had produced a five-way race, with the candidates offering various versions of bail reform, from a repeal of cash bail for nonviolent charges to prosecutors seeking bail only when a conviction would result in jail time. Their positions were highlighted through the ACLU of Massachusetts campaign, [What a Difference a DA Makes](#).

Manhattan DA Cyrus Vance, Jr. announced that his office would no longer seek money bail for people charged with low-level offenses, citing money bail as a cause of inequality and mass incarceration. This policy is similar to one implemented by Brooklyn DA Eric Gonzalez.

Following up on a campaign promise to end mass incarceration, and prompted by calls for change from advocacy groups, Philadelphia DA Larry Krasner announced that his office would not seek money bail in a number of misdemeanor and low-level felony cases.

NEW Defense attorney Joe Gonzales won the Bexar County (Texas) district attorney race, after campaigning on the need for bail reform. When someone is charged with a low-level offense and has little to no criminal history, Gonzales [said](#), “I don’t see why we can’t agree to [personal recognizance] bonds so that these people can be released to go back to work, and then we’ll see them when they have their day in court.”

Since July 2017, the rate of referral to all court diversion programs in **Vermont** has more than doubled, from 10 percent to 24 percent. The steep increase in court diversion participation is the

result of statutory and programmatic changes led by Attorney General T.J. Donovan. Act 61, passed in 2017, made important changes to the court diversion and pretrial services programs in order to expand access. The majority of diversion participants are charged with misdemeanors, such as disorderly conduct, petit larceny, and unlawful mischief.

NEW See also, Spotlight, Virginia: Poised for Change on page 15.

Assessment/Conditions of Release

A new [video](#) from Denver highlights its changes in practices as a result of participating in Smart Pretrial. These changes include participation of defense attorneys at first appearance hearings, pre-release pretrial assessment of everyone charged with a felony offense, and graduated levels of supervision for people released before trial—beginning with no supervision for those with the highest likelihood of pretrial success.

Pilot programs in Hamilton County and Hendricks County, **Indiana**, show that employing pretrial assessments results in more people being released while maintaining public safety and court appearance rates. In Hamilton County, 2,166 people were assessed in 2017 and 79 percent were released without having to pay bail; of those people, over 91 percent made all court appearances and 89 percent were not charged with new crimes. In Hendricks County, the failure to appear rate has declined from 19 percent to 10 percent. Overall in Indiana, 11 pilot counties are using pretrial assessment tools; they are also working with the Indiana University Public Policy Institute to collect data and to validate the tools. A 2017 law signed by Gov. Eric Holcomb asks all Indiana courts to adopt evidence-based assessment rules by 2020.

In an effort to reduce the number of people held pretrial due to an inability to pay, Nashville’s Pretrial Release program, run by the Davidson

County’s Sheriff’s Office (**Tennessee**), will use a scoring tool to identify people with high likelihoods of pretrial success—those who will return to court with no new arrests—and permit them to be released without paying cash bail. The new policy involved negotiations among the sheriff, prosecutor, public defenders, police, court clerks, and judges. [Sheriff Daron Hall supported the program](#), saying: “There has never been any proof that someone’s ability to pay is a predictor they are more likely to show up for court. There is research, however, that shows people who remain in jail are more likely to be found guilty and serve more time.” These efforts were intensified by the filing of a complaint from Equal Justice Under Law with the Office of Civil Rights; the Office of Civil Rights closed its investigation in August 2018, [citing the improvements underway](#).

Judiciary-led Change

Judiciaries in some states have conducted studies to explore pretrial justice issues in depth and have adopted court rules and procedures that seek to reduce money-based detention and implement risk-based practices. This section covers pretrial improvement work initiated and enacted by the courts.

In her 2018 [State of the Judiciary address](#), California Chief Justice Tani Cantil-Sakauye renewed her call for bail reform, citing Robert Kennedy’s 1964 report on bail, saying that money bail is “a vehicle for systematic injustice.” She highlighted the work of the commission that she established in 2016 and the 10 [unanimous recommendations](#) that the group made in the fall of 2017. The language in this report influenced subsequent provisions in SB 10.

Colorado Supreme Court Chief Justice Nancy Rice has established a [blue ribbon commission](#) to address pretrial release practices. In a press release, Rice noted the importance of maintaining

the presumption of innocence, while preserving a victim’s right to be kept safe and informed during the pretrial process.

The Judicial Council Ad Hoc Committee on Misdemeanor Bail Reform submitted a [report](#) to the Judicial Council of **Georgia**, making several recommendations to the state’s bail framework. The changes include establishing a data collection system to determine which practices are the most effective, creating an efficient citation system, and investigating the use of pretrial assessments.

A broad range of system stakeholders and legal professionals are calling on the Illinois Supreme Court to adopt a statewide rule that ensures no indigent people are locked up pretrial due to inability to pay. A group of 87 attorneys, including prosecutors, judges, and law professors, sent a [letter](#) to the Illinois Supreme Court Rules Committee urging the adoption of the rule. The group also contributed an [article](#) to Medium. Written by State Sen. Kwame Raoul, chairman of the Illinois Senate’s Judiciary Committee, and Commissioner Jesus “Chuy” Garcia, chairman of the Cook County Criminal Justice Committee, the article noted that all key stakeholders in Cook County supported the rule change.

NEW Kansas Supreme Court Justice Lawton Nuss has [created the Ad Hoc Pretrial Justice Task Force](#) to examine the state’s pretrial detention practices and make recommendations. Court of Appeals Chief Judge Karen Arnold-Burger, who chairs the 15-member task force, noted, “We’ve seen a lot of change in pretrial detention practices across the nation the last few years. We have an opportunity to learn from other jurisdictions, what they have tried and how it has worked for them.” Creation of the task force follows a September [report](#) from the Ad Hoc Committee on Bonding Practices, Fines, and Fees in Municipal Courts, whose recommendations included the further study of pretrial assessments.

Maryland's Court of Appeals voted unanimously last year to overhaul the bail system, requiring judges to consider whether arrested people are able to pay bail when they set conditions for release. According to Judge John P. Morrissey, chief judge of the District Court of Maryland, the rule has decreased the percentage of people who are detained because they cannot or do not pay bail, declining from 40 percent in the months before the reforms were enacted to 20 percent afterward. About 53 percent of those who appear before a bail commissioner are released from custody, up from 44 percent before the reforms, Morrissey said.

The Hon. Tina L. Nadeau, chief justice of the Superior Court of **New Hampshire**, welcomed PJI's 3DaysCount™ initiative to the state, saying: "We are committed to implementing smarter pretrial justice policies here in New Hampshire. The 3DaysCount model will help us start the process of evaluating our current practices regarding money bail and pretrial justice. This will help us determine the best ways to make changes and to take action." As part of the 3DaysCount process, officials will also explore ways the pretrial system may be amended to better address the challenges posed by New Hampshire's ongoing opioid crisis, which has claimed more than 1,800 lives over the past five years.

NEW Superior Court Judge Bradley Letts is leading the implementation of new pretrial practices to take effect in 2019 for Judicial District 30B, which includes Haywood and Jackson counties in **North Carolina**. The new policy will allow judges to set unsecured bonds for charges such as simple drug possession, writing worthless checks, misdemeanor larceny or shoplifting. Letts is also exploring ways to provide access to counsel within 72 hours of arrest to those in custody by contracting with the state Indigent Defense Services to handle pretrial hearings.

NEW Judge Michael L. Nelson Sr. of Cleveland Municipal Court (**Ohio**) announced that he would no longer send people accused of low-level crimes into the county jail system, after six people have died in four months while in jail. Instead, Nelson said he would release them, in some cases with conditions such as check-ins or electronic monitoring, instead of holding them on bail.

Utah rolled out its plan to give judges information from pretrial assessments, following a slight delay after the legislature passed a motion last year encouraging the courts to halt the use of assessments. The tool gives judges more information, which [judges had identified as necessary to make effective pretrial decisions](#). Rep. Paul Ray, who introduced the original resolution and suggested he would introduce legislation to ban assessments, said that he became more comfortable with the use of assessments after court officials explained how they would be used.

In **Virginia**, Fairfax County Circuit Court Judge David Bernhard has stopped setting bail for nearly all people not deemed a danger to the public or a flight risk. Bernhard, a former defense attorney, stated in a [Washington Post](#) article that the imposition of money bond often has a cascading effect, leading to a loss of employment and housing, and that he instead often recommends pretrial services. Bernhard is believed to be the first judge in northern Virginia to undertake this practice.

Pretrial Litigation

In recent years, the constitutionality of existing pretrial practice has been challenged in lawsuits against counties and cities. Many of these cases have been settled, with jurisdictions agreeing to change practices that treat people differently because of their access to money. Some initial rulings have been appealed and these challenges

continue to make their way through the courts. At the same time, as states adopt new rules and laws around pretrial practice, and as attorneys advocate more vigorously at the pretrial stage, new case law is developing around issues such as the evidence that must be disclosed at the pretrial stage, the right to call adverse witnesses at a pretrial detention hearing, and the boundaries of preventive detention.

System-Reform Litigation

The nonprofit civil rights law firms Civil Rights Corps (CRC) and Equal Justice Under Law

(EJUL) have been successfully challenging the constitutionality of secured money bail derived from bail schedules. An overview of their work can be found in the PJI publication [Money-Based Pretrial Practices Face Constitutional Challenges](#). The ACLU has also undertaken system-reform lawsuits, focusing on wealth-based detention, access to counsel, and prosecutorial accountability.

The 10th Judicial District of **Alabama** and the U.S. Department of Justice (DOJ) reached a historic [agreement](#) to improve pretrial justice practices in Jefferson County, Ala., heading off additional litigation. The binding agreement came in response to a complaint filed by Equal Justice Under Law and a subsequent investigation by the DOJ's Office for Civil Rights into Jefferson County's lack of an objective decision-making framework for pretrial release decisions, which led to discriminatory outcomes. In response to the complaint, the county sought technical assistance from PJI to find alternatives to a fixed money bond system and to implement an objective system of pretrial justice. The binding agreement reached with the DOJ this month solidified pretrial improvements by providing the DOJ oversight of:

- Engagement of prosecutor and defense in reviewing pretrial assessment results before bail setting;

- Collaboration with the University of Alabama-Birmingham for ongoing data collection and reporting, including validation of the pretrial assessment tool and equity measurements; and
- Establishment of supervision of least-restrictive conditions and the provision of services to support individuals in being successful during the pretrial phase.

A federal district judge issued a [preliminary injunction](#) in a lawsuit brought against Cullman County, **Ala.**, by Civil Rights Corps, the Southern Poverty Law Center, the ACLU Criminal Law Reform Project, and the ACLU Foundation of Alabama, ordering that the sheriff of Cullman County release all bail-eligible people on unsecured appearance bonds using Cullman County's current bail schedule, with some exceptions. The injunction followed a memorandum opinion from the judge, in which she outlined several deficiencies in the county's bail procedures; she also noted that the plaintiffs had convincingly demonstrated that "prolonged pretrial detention is associated with a greater likelihood of re-arrest upon release, meaning that pretrial detention may increase the risk of harm to the community."

The man whose case resulted in a historic **California** bail decision finally obtained his own pretrial release on May 9. Earlier in the year, the California appeals court ruled that it was unconstitutional for courts to set bail amounts without considering ability to pay, and that Kenneth Humphrey was entitled to a new bail hearing. These hearings are now known as "Humphrey hearings." Humphrey was released after such a hearing with a number of non-financial conditions, including an ankle monitor, a restraining order, and full-time occupancy in a residential program for seniors.

NEW A [lawsuit](#) brought by the ACLU of **Colorado** brought a on behalf of a man who was detained

because could not afford a \$50 administrative fee has been settled. Mickey Howard had been arrested with \$64 in his pocket when he was brought to jail, but only had \$34 after paying the \$30 jail booking fee. He then had enough money for the \$10 cash bond, but not the required \$50 bond fee. As a result, Mickey Howard spent an additional four nights in jail before being bonded out by the Colorado Freedom Fund. The settlement provides for a “meaningful monetary payment” for Howard, and the Denver County Court has decided to assess and collect the \$50 bond fee later in the court process to ensure that people would not be held in jail due to inability to pay. The lawsuit had also resulted in an announcement from Denver Sheriff Patrick Firman that the jail booking fee would be waived for all people detained before trial.

A lawsuit brought by the ACLU of Florida against Leon County moved another step forward in August. Judge Robert Hinkle of the U.S. District Court of Northern Florida stated that the county’s practice of setting unaffordable bail as a means of detaining someone was unconstitutional, but he declined to make a ruling. Instead, the judge asked plaintiffs to determine how many people in the Leon County Detention Center are detained due to inability to pay and could qualify as part of a class action.

The Court of Appeals for the 11th Circuit vacated earlier preliminary injunctions granted by the lower court, saying that the standing bail order adopted by the city of Calhoun, Ga., was constitutional. The standing bail order had been challenged because it set bail amounts based on the offense and allowed a 48-hour period to determine indigency; in a split decision, the Court of Appeals upheld both policies. The dissenting judge, Beverly Martin, wrote, “It seems unremarkable to say that being jailed for 48 hours is more than a mere inconvenience.”

The ACLU of Georgia and the ACLU have filed a [class action](#) in **Glynn County, Ga.**, alleging an

unconstitutional bail system and inadequate access to counsel. The plaintiffs in the suit are people who have been locked up for misdemeanors because they cannot afford bail. Moreover, the suit also claims that the attorney in charge of indigent defense cases for the county does not visit detained clients or represent them in bail hearings.

In a [lawsuit](#) brought by Civil Rights Corps, the Lawyers’ Committee for Civil Rights Under Law, Orrick, Herrington & Sutcliffe, and New Orleans civil rights attorneys Bill Quigley and Anna Lellelid-Douffet, the U.S. District Court for the Eastern District of **Louisiana** issued a declaratory judgment finding that judges in New Orleans have been systematically and unconstitutionally jailing people solely because they are too poor to pay court costs, fees, and fines. The court also found that the New Orleans courts failed to provide a neutral forum for determining fines and fees because a portion of the fines and fees went to a fund benefitting the judges who imposed them.

NEW The Lawyers’ Committee for Civil Rights Under Law and the law firm of Santoni, Vocci & Ortega filed a [class action](#) challenging 4 Aces Bail Bonds (trading as Baltimore’s Discount Bail Bonds) operation as an unlicensed bail bonds company profiting off money bail in **Maryland**. The lawsuit is part of the Lawyers’ Committee for Civil Rights Under Law’s ongoing efforts to challenge the debt collection suits filed by the company.

The bail bond industry has also tried to employ litigation as a means of stopping system-wide reform. In **New Mexico**, such efforts proved unsuccessful. A federal judge imposed [sanctions](#) on an attorney representing the New Mexico bail bond association for filing frivolous claims that sought damages from state Supreme Court justices and others while challenging the system of pretrial release that virtually did away with monetary bail bonds. Judge Robert Junell had dismissed the

underlying suit in December 2017, finding that the bail bond association and lawmakers who brought the suit lacked standing and that the named plaintiff failed to demonstrate that her constitutional rights had been harmed under New Mexico's reform.

A plea deal on notary fraud in **North Carolina** has attracted some [attention](#). As part of the deal, Sarah Jessenia Lopez has agreed to testify against members of different bail bond companies, including Cannon Surety. In 2017, the state's Department of Insurance seized control of the company due to a failed audit and claims that the company was not paying its bail forfeiture obligations. The Department of Insurance regulates the state's bail bond industry. Between 2009 and 2016, criminal investigators made more than 1,500 arrests related to insurance and bail bonding fraud alone.

Tulsa County, Okla., its sheriff, its 15 special judges, and the presiding judge of the district court were named defendants in a [lawsuit](#) brought by Civil Rights Corps and a local civil rights group, Still She Rises. The suit alleges that the courts routinely fail to consider ability to pay or the necessity of requiring secured money bail, resulting in detention based solely on inability to pay. The suit also points out that the county denies the appointment of counsel for indigent people at the hearing where pretrial release decisions are made; appointed counsel's first opportunity to file a motion challenging the secured money-bail condition occurs a week into a client's detention. The county's pretrial detention rate is 18 percent higher than that in the rest of the state.

An investigation into the pretrial practices of Davidson County, **Tenn.**, by the Office of Civil Rights (OCR) closed in August after OCR found that the changes made by the county were consistent with the remedies it would have sought if it fully investigated the complaint and found a violation. The investigation was initiated after Equal Justice Under Law filed a complaint in 2015, claiming that

the pretrial practices Davidson County discriminated against African Americans. The changes included the implementation of a pretrial assessment tool, which had been found to effectively predict re-arrest and failure to appear with no statistically significant disparate impact on African Americans.

A [lawsuit](#) filed by the ACLU of Texas and national law firm Arnold & Porter alleges that **Galveston County, Texas**, operates a two-tiered system of justice, in which those who cannot afford to pay money bail amounts determined by the county's bail schedule are detained for weeks or longer, while those who face the same charges but can afford to pay the money bail amounts are freed until trial. The lawsuit was brought against the county itself as well as against the county's sheriff, chief magistrate judge, and chief prosecutor. This is the first filing by the ACLU to name a county's district attorney as a defendant. The DA is included in this case because Galveston County's district attorneys are involved in setting bail amounts for felony charges, often recommending bail amounts even higher than what the bail schedule suggests.

NEW A slate of new judges is expected to change the course of the **Harris County, Texas** bail case of *O'Donnell v. Harris County*. The judges, who automatically replaced the previous judges in the lawsuit, are expected to ask for the case to be dismissed. The case has cost Harris County in over \$9 million in legal fees. A hearing has been set for February 1, 2019, to discuss possible terms for settlement.

A [second class action](#) based in **Houston**, brought by Civil Rights Corps, the Texas Fair Defense Project, and Kirkland & Ellis, alleges that Harris County failed to comply with the Fourth Amendment's probable cause requirements. In September, a federal judge found that city officials had intentionally destroyed evidence and made multiple misrepresentations to the court relating to

the suit. The judge made a rare ruling that, if the case goes to trial, members of the jury must infer as fact that authorities destroyed evidence, knowingly and routinely detained people more than 48 hours without a probable cause hearing, and acted with deliberate indifference to the fact that they were violating people's constitutional rights.

Civil Rights Corps, the ACLU, and the Texas Fair Defense Project have brought a lawsuit against **Dallas**, its sheriffs, judges, and magistrates because people who cannot afford bail are held indefinitely, while those who can afford bail are freed immediately, a violation of the U.S. Constitution. The suit further charges that people in jails are not permitted access to counsel and that the public is not permitted to attend hearings. The Texas Commission on Jail Standards previously reported that 70 percent of inmates in the Dallas County jail were there because they could not afford bail. The U.S. District Court for the Northern District of Texas granted a preliminary injunction on Sept. 20, finding that plaintiffs were likely to prevail on claims of equal protection and procedural due process. The court also agreed with the Harris County case finding that "secured financial conditions fare no better than unsecured or non-financial conditions at assuring appearance or law abiding behavior, and that community supervision was actually more cost effective than pretrial detention." The court based its relief after the case in Harris County, Texas.

Pretrial Caselaw

The **California** Court of Appeals upheld a trial court's [decision](#) to hold a man charged with kidnapping with intent to commit rape without bond, noting that while it was unusual to withhold bail for a non-capital offense, evidence supported the trial court's finding that there was a substantial likelihood that the man's release would result in great bodily harm to others.

The **Indiana** Supreme Court has ruled that state law does not prohibit a clerk of court from transferring bond funds to a creditor who has obtained a civil court order to garnish a cash bond, once the bond is no longer required. Dissenting judges expressed concern that such a rule might interfere with a person's incentive to appear in court, if the person realizes the bond is not recoverable even with compliance with court appearance.

The U.S. Court of Appeals for the Third Circuit affirmed the District Court's ruling in the case of [Holland v. Rosen](#) that there is no constitutional right to deposit money or to obtain a corporate surety bond as an equal alternative to non-monetary conditions of pretrial release. **New Jersey** moved away from the monetary bond system with a model that prioritizes the use of non-monetary conditions in 2017.

The **New Jersey** Supreme Court ruled in [State v. Dickerson](#) that a search warrant affidavit is not required to be automatically disclosed to arrested people in pretrial detention hearings, citing the "impractical demands" it might place on law enforcement and ongoing investigations. The case, which the New Jersey Law Journal said could potentially lead to the withholding of relevant information, is one of a series interpreting the state's new Criminal Justice Reform Act. The state appellate court also ruled recently that arrested people [cannot call adverse witnesses in pretrial detention hearings](#).

NEW The **New Jersey** Supreme Court considered an appropriate remedy when prosecutors fail to disclose "all exculpatory evidence" before the detention hearing in [State v. Hyppolite](#). When exculpatory evidence is disclosed after a detention hearing, judges should use the standard that a 'reasonable possibility' exists that the outcome of the detention hearing would have been different if the evidence been disclosed, to decide whether to

not guilty, waiving his or her right to a trial by jury, and entering a drug treatment program.

California SB 215 requires a court granting pretrial diversion due to mental disorder, upon request, to conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, to order its payment during the period of diversion. The bill also provides that an arrested person's inability to pay restitution due to indigence or mental disorder is not grounds for denial of diversion or a finding that the person has failed to comply with the terms of diversion.

California SB 1054 authorizes a qualified local public agency in the City and County of San Francisco to contract with the existing not-for-profit entity that is performing pretrial services to provide continuity and sufficient time to transition the entity's employees into public employment.

Colorado enacted twin bills, both introduced by state Sen. Bob Gardner, to establish alternative programs in the criminal justice system to redirect individuals with a behavioral health condition to community treatment (SB 249) and to also establish a statewide behavioral health court liaison program (SB 251).

Connecticut will study the feasibility of establishing one or more courts that specialize in the hearing of criminal or juvenile matters in which an arrested person is dependent on opioids. (SB 483).

Delaware Gov. John Carney signed a bill (HB 204) to change the conditions under which people are released pretrial. The new law, while it does not eliminate money bail, encourages courts to use non-monetary conditions of release to provide reasonable assurances that the person will appear in court and not compromise public safety. The law also calls for the use of empirically developed

instruments to guide courts in making decisions about a person's likelihood of pretrial success.

The **Delaware** Appropriation Act (SB 235) establishes a Criminal Justice Improvement Committee, whose members include the attorney general, chief defender, commissioner of correction, and director of substance abuse and mental health. The committee's mandate is to look for opportunities for efficiencies in the criminal justice system, including "[b]ail and alternatives to incarceration including new technologies."

Florida has enacted historic criminal justice legislation (SB 1392), requiring the collection and public release of criminal justice data. The bill is being hailed as a way to increase transparency, identify areas for improvement, and provide a yardstick for reforms as they are implemented. The data collected will include who is assigned bail and for what kind of charges, how much bail people are required to pay to be released from pretrial detention, who fails to pay low bail, and what is the pretrial release violation rate.

Georgia Gov. Nathan Deal signed into law SB 407, which promotes the use of citations in response to misdemeanors by requiring the Judicial Council of Georgia to develop a uniform misdemeanor citation and complaint form for use by all law enforcement officials. Other portions of the bill state that courts shall not impose excessive bail for misdemeanors and require courts to consider the financial resources of the person accused when setting bail.

Hawaii has passed a criminal justice data bill (SB 2861) that requires the Department of Public Safety to collect data and performance indicators, including the total number of people held pretrial and admitted to pretrial detention each month; the number of people released pretrial each month; the average length of pretrial stay; the number of people held on cash bail; and the average amount

of time for completing and verifying pretrial risk assessment. Each indicator will provide information by gender, race, and age.

Illinois has amended its code of criminal procedure to address the needs of pregnant women at the pretrial stage. HB 1464 provides that if the court reasonably believes that a pretrial detainee will give birth while in custody, the court shall order an alternative to custody unless, after a hearing, the court determines that the release would pose a real and present threat to the alleged victim or to the physical safety of any person or the general public.

Illinois SB 3023 creates the Community Law Enforcement Partnership for Deflection and Addiction Treatment Act, which allows any law enforcement agency to establish a program to facilitate contact between a person and a licensed substance abuse treatment provider for the assessment and coordination of treatment. The bill also requires the Criminal Justice Information Authority to measure performance of the program. The initiation of the bill was a joint effort of the [Dixon Police Department](#), the [Mundelein Police Department](#), and [Treatment Alternatives for Safe Communities \(TASC\)](#).

A new **Indiana** law (HB 1328) states that a person charged with murder is not bailable if the state proves by a preponderance of the evidence that the proof is evident or the presumption strong. In all other cases, offenses are bailable.

A program to pilot pretrial assessments in four counties in **Iowa** was originally vetoed by Gov. Kim Reynolds in the appropriations bill, which would have immediately ended the program. Instead, the program has been given six months to operate and gather data. In her veto message, Gov. Reynolds wrote, “If, after studying the data and research conclusions, it is found that this program will be in the best interests of the public, then new legislation

should be considered that authorizes the [Public Safety Assessment] or similar risk-assessment tools” (HF 2492).

Louisiana now provides for the release of a person without surety when the person was not brought before a judge within 72 hours of arrest (HB 293). The legislature also passed a resolution (HCR 100), requesting the Louisiana State Law Institute to review Louisiana laws regarding bail and to study whether a system that provides for the presumed release of a person on unsecured personal surety or bail without surety in lieu of a preset bail schedule would be more successful in ensuring the appearance of the person and the public safety of the community.

Maryland has established the Pretrial Services Program Grant Fund to provide grants to eligible counties to establish pretrial services programs (HB 447).

Massachusetts has enacted changes to its laws that require prosecutors to establish pre-arrestment programs to divert people with mental health needs away from the justice system, to require judges to make inquiries into ability to pay, to make on-the-record findings when the amount of bail set results in detention, and establishes a commission to further study pretrial release (S 2371 and H 4012).

The **Massachusetts** budget bill (H 4800) provides that “funds shall be used for the ongoing development and implementation of the validated risk assessment tool to inform pre-adjudication decision-making with regard to detention, release on personal recognizance, or release under conditions of criminal defendants before the adult trial court”; the bill also calls for the delivery of a report to the legislative body on the status of the validated assessment tool and efforts to implement the tool.

The **Michigan** appropriations bill (SB 848) declares that the state court administrative office shall pilot a pretrial assessment tool in order to provide relevant information to judges “so they can make evidence-based bond decisions that will increase public safety and reduce costs associated with unnecessary pretrial detention”; the bill also requires the office to submit a progress report on the implementation of the assessment tool and associated costs by Feb. 1, 2019.

NEW **Missouri** Governor Mike Parson signed HB 2 into law, which expands treatment courts to every county in Missouri. The bill permits every circuit court to establish an adult treatment court, DWI court, family treatment court, juvenile treatment court, veterans treatment court, or any combination thereof, that provides an alternatives to the judicial system to handle cases which stem from substance use. The law also establishes a Treatment Court Coordinating Commission to establish standards and practices for the treatment courts.

New Hampshire enacted SB 556, which revises the procedures for the granting of bail, the procedure for annulment of certain violations and misdemeanors, and the requirements for demonstrating indigency for the purpose of the annulment of a criminal record. The new law creates a commission charged with developing a proposal for pretrial services and the use of assessment tools; a report is due to the state legislative leadership and to Gov. Chris Sununu on Nov. 1.

Ohio enacted SB 66, which allows prosecutors to establish pretrial diversion programs for adults who are accused of committing criminal offenses and who the prosecuting attorney believes probably will not offend again. The prosecuting attorney may require, as a condition of an accused person’s participation in the program, the person to pay a reasonable fee for supervision services that include,

but are not limited to, monitoring and drug testing. The new law also allows “[a]ny person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture for the offense charged may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case that pertains to the charge.”

Oklahoma amended its Pretrial Release Act and authorized special judges to determine eligibility for certain releases through SB 363.

Through HB 849, **Tennessee** has directed the State Advisory Commission on Intergovernmental Relations to perform a study of the implementation and effects of global positioning monitoring as a condition of bail for people accused of stalking, aggravated stalking, or especially aggravated stalking involving a violation of an order of protection.

Vermont has enacted H 728, which replaces the language “ensure the appearance of the person” to “mitigate the risk of flight from prosecution” to reflect more accurately the legislative intent behind bail. The new law provides that, in general, no bond shall be imposed upon the temporary release of a person charged with an expungement-eligible misdemeanor, though judges retain the discretion to set bail for these individuals at a maximum of \$200. The law also requires the court to consider a person’s financial means before setting bail; creates separate lists of considerations for judges when setting conditions to mitigate the risk of flight and conditions to protect the public; and provides that the court has the authority to revoke bail if a person repeatedly violates the conditions of his or her release only if those violations impede the prosecution of the accused.

Virginia has raised its felony threshold from \$200 to \$500, the first such increase in almost 40

years. Lawmakers who supported the change in SB 105 expressed concerns that the low threshold unnecessarily derailed lives for relatively minor items. Virginia previously had the lowest felony threshold amount in the country.

Washington has enacted significant bail reform with the signing of SB 5987 by Gov. Jay Inslee. The bill, which was drafted in response to a Washington Supreme Court opinion, revises the definition of a pretrial release program to include any program in superior, district, or municipal court and finds that courts are allowed to pursue interests other than court appearance through the regulation of release. The bill raises concerns that courts may heavily extend conditions of release in a greater number of cases.

Introduced and Pending Legislation

Federal legislation activity

Sen. Bernie Sanders (I-Vt.) introduced S. 3271, the No Money Bail Act, a companion bill to one introduced by Rep. Ted Lieu (D-Calif.). The bill provides grants to states that wish to implement alternate pretrial systems and reduce their pretrial detention population; withholds grant funding from states that continue to use money bail systems; and requires a study to ensure the new alternate systems are not leading to disparate detention rates.

Illinois Rep. Danny Davis introduced [HR 4833, the Bail Fairness Act of 2018](#), which would require states to release people charged with misdemeanors on non-monetary conditions to be eligible for certain federal law enforcement and justice funds. The bill also requires states to provide pretrial diversion programs.

Citing concerns about industry abuses, Sens. Sherrod Brown (D-Ohio) and Cory Booker (D-N.J.) sent [letters](#) to 22 insurance companies, requesting information about their practices regarding

underwriting bail bond companies, monitoring for abuses and legal violations, and promoting consumer awareness. In the letter, the senators noted that they were “concerned that many of our nation’s insurance companies may be pursuing profits at the expense of economic security for vulnerable families and the goals of public safety.”

State legislation: The following state legislatures were still in session as of December 31 with pending pretrial bills.

Illinois SB 2564 provides that the chief judge of the Circuit Court of a county may decide not to implement a provision by local court rule that requires a person charged with an offense to be allowed counsel at the hearing at which bail is determined. Multiple bills, including SB 2600, SB 3269, and HB 4644, allow some credit toward bail for each day a person is incarcerated. SB 3268 appropriates money from the General Revenue Fund to the Supreme Court for probation reimbursements and training for probation officers in pretrial services and other operational expenses in support of bail reform.

Massachusetts H 4401, in the part relevant to pretrial justice, provides that “funds shall be used for the ongoing development and implementation of the validated risk assessment tool to inform pre-adjudication decision-making with regard to detention, release on personal recognizance, or release under conditions of criminal defendants before the adult trial court; provided further, that a report shall be submitted to the house and senate committees that includes: (a) the status of the validated risk assessment tool; (b) any efforts to implement the risk assessment tool in the courts; and (c) further goals to expand the use of the risk assessment tool.”

Massachusetts Gov. Charlie Baker filed [bill](#) H 4903 to expand the list of offenses that provide grounds for a pretrial dangerousness hearing; the

SPOTLIGHT

Virginia: Poised for Change

In a state where [candidates for attorney general used to argue over who was tougher on crime](#), Virginia policymakers now focus on commonsense justice policies, from the governor's mansion to local attorneys running for prosecutor spots, known in Virginia as commonwealth's attorneys. Bail reform and court fines and fees are a major part of these conversations.

Governor Ralph Northam announced in December plans to stop suspending driver's licenses for unpaid court fines and fees. One in six Virginia residents have had their licenses suspended, two-thirds of them for unpaid court fees. Three days after Northam's announcement, which requires approval from the Virginia General Assembly, a federal judge in Charlottesville granted an injunction to prevent the Virginia Department of Motor Vehicles from enforcing a state law that requires automatic suspension of driver's licenses for failure to pay court fines and costs.

Mark Herring, the Attorney General of Virginia and a candidate for governor, called for pretrial reform in the state in a [letter and legal memorandum to the Chair of the Virginia Crime Commission](#), laying out the state's legal framework, potential constitutional concerns, and potential principles for reform. In Virginia, 74% of localities have pretrial services, but nearly two-thirds of people placed on pretrial services supervision are also ordered to post a secured bond. In his letter, Herring noted that "Virginia has no real methodology to determine an appropriate amount of bail" and that the state's current "disjointed and non-standardized use of bail creates a risk" of constitutional violations.

Meanwhile, prosecutors are moving away from money bail. Commonwealth's attorneys for Chesterfield and Arlington counties and the cities of Richmond and

Alexandria have announced they will not seek cash bonds in certain cases. Justice Forward Virginia, a political action committee supporting progressive candidates, has made bail reform one of its top priorities. These actions have had broad support.

Chesterfield County Sheriff Karl Leonard, a Republican, [told the Chesterfield Observer](#) that he supports the move away from cash bonds because he's frustrated that in the jail he oversees, people have been held simply because

they couldn't afford bond. "It disproportionately affects low-income people. Instead of them paying \$200 and getting to leave, taxpayers have to pay \$128 a day to keep them in jail. That's ridiculous." In some cases, elected officials are encouraging prosecutors to take such steps. Four members of Virginia's House of Delegates who represent Prince William county wrote a [letter to Paul Ebert](#), the county's commonwealth's attorney, asking him end the use of bail bonds and instead, "create a pretrial release system that is based on the defendant's perceived public safety and flight risk rather than the defendant's ability to pay."

Reports highlighting negative jail conditions may also propel pretrial issues to the forefront. A study of jail deaths by the Huffington Post found that [three of the top ten deadliest jails](#) in the country were in Virginia, the only state to have multiple facilities on the list. The Department of Justice Civil Rights Division released a [report](#) on one of the facilities, the Hampton Roads Regional Jail, in December, finding that the jail violates the constitutional rights of people detained there due to inadequate medical and mental health care, and the placement of people with mental illnesses in restrictive housing. Over half the people in the jail's population (55%) have pretrial status.

NEW **New York** Gov. Andrew Cuomo has proposed new regulations to address predatory practices in the bail bond industry. The [new regulatory package](#) clarifies that bail agents may not charge fees other than the premiums set by statute and costs of special bail conditions imposed by a court. It also requires prior approval from the superintendent of the Department of Financial Services of all bail bond contracts and forms; prohibits the use of unapproved forms; requires that bail agents provide consumers with receipts and copies of all contracts and documents involved in the bail transaction; and requires that bail agents post their licenses and display “how to make a complaint” signs.

Gov. **Tom Wolf** of Pennsylvania announced plans to improve pretrial decision-making. The plans were based on [findings](#) that pretrial release decisions vary widely by geography and race. In 2015, monetary bail was used in 76 percent of felony cases in Philadelphia County, but in just 53 percent in Allegheny County and closer to 50 percent of cases in other counties. Thirty-three percent of white people charged with felony offenses involving a weapon received a monetary bail decision, compared to 78 percent of black people. Moreover, only 37 of Pennsylvania’s 67 counties have county pretrial services programs—and just 12 of those use risk assessments to inform decisions about bail, diversion, release, and pretrial supervision.

Community & Grassroots-led Change

Municipal-Level Change

Over objections from the for-profit bail bond industry, the **Atlanta City Council** unanimously passed [changes to its ordinances](#) that will reduce

the number of people locked up before trial for nuisance and nonviolent charges. The changes, sought by community and grassroots activists, were sponsored on behalf of newly elected Mayor Keisha Bottoms.

The website [cleveland.com](#) ran a series entitled “Justice for All,” highlighting issues around money bond in **Cuyahoga County (Ohio)**. Among the findings of the series was that a first-degree misdemeanor charge resulted in bonds ranging from \$2,000 to \$10,000 among the county’s 13 municipal courts. The series also featured personal stories of people affected by bond and a poll that found Ohioans overwhelmingly favor bail reform.

NEW Activists protested conditions in the **Cuyahoga County (Ohio)** Jail before attending a county council meeting, where they addressed concerns over the treatment of people in the jail. Council President Dan Brady told the group that council members shared their concerns about the jail, where [eight people have died in seven months](#), and announced that the county is working to create a community panel to listen to and address residents’ concerns about the jail. A facility review conducted for the U.S. Marshals Service gave the overall jail operation a rating of “unsatisfactory/at-risk,” indicating “the performance of the function is so defective or deficient, it actually presents a risk to the safety of the staff and detainees; the risk include[s] life and safety concerns as well as inhumane conditions of confinement.”

NEW As part of the MacArthur Foundation Safety and Justice Challenge, people charged with misdemeanor offenses in **Hennepin County (Minnesota)** will be eligible for free rides to court. Some clients will also be eligible to use the funds to meet with their attorneys. The pilot program was developed in recognition of the economic and

logistical barriers to traveling downtown. The program will begin in January 2019, and is expected to fund approximately 3,000 rides.

NEW **Miami-Dade County (Florida)** Public Defender Carlos J. Martinez and the Miami-Dade College's School of Justice held a day-long training open to the public to address disparities in the criminal justice system, including the pretrial system. PJI, the ACLU of Florida, and Florida State University's Project on Accountable Justice were among participating groups.

***NEW** In an effort to promote transparency around jails, a [Mississippi jail database](#), a partnership of the Roderick and Solange MacArthur Justice Center and the University of Mississippi School of Law, provides information on who is in jail on what charge, length of stay, and county-by-county information. The Center produced a new survey showing that while the number of people held for short periods of time is going down, the number of people held for longer periods is holding steady; out of 5,000 people held in jails, more than half are held for 90 days or more, and 600 had been held for more than a year. It is believed that new rules promulgated by the state supreme court in 2017 to use summons in lieu of arrest warrants and encouraging courts to make releases pending trial when possible are behind the downward trend. The state is also still working to comply with state law to count people in jail and calculate time spent in jail, [reported](#) a legislative watchdog group, the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER).

Black Lives of Unitarian Universalism (UU) led a panel discussion in **Kansas City** called "Anatomy of a Bailout" to educate fellow Unitarian Universalists about the money bail system and to identify ways congregations can work to abolish it in their communities.

NEW More than 130 **New York**-based organizations sent a [letter](#) to New York Governor Andrew Cuomo, saying that they are encouraged by his commitment to end cash bail in the next legislative session, but warning that "we cannot abide legislation that maintains other for-profit influences or replaces money bail with mass community surveillance, racially-biased risk assessment instruments, or an expansion of 'preventative' detention." The letter outlines a number of principles they would like pretrial justice reform to follow.

NEW Demolition began on Spofford Juvenile Detention Center, a notorious facility in the Bronx. As noted in an [article](#) by Felipe Franco in the Juvenile Justice Information Exchange, this demolition was symbolic of New York City's efforts to transform its juvenile system. From 2009-2018, **New York City** experienced a 70 percent decline in youth admitted to detention centers, the result of efforts to more rigorously implement the Detention Risk Assessment Instrument (DRAI), and use least restrictive settings. At the same time, New York City has seen a 70 percent drop in youth arrests.

NEW The Mass Bail Out Action was a month-long campaign by Robert F. Kennedy Human Rights to obtain pretrial release for women and teens from **New York's** Rikers Island. At the conclusion of the event, which took place in October, 105 people were released, including 64 women and 41 high-school aged males. Ninety-two percent of people released through the campaign were charged with felonies. Of the 90 people who had court dates, all but two appeared for court. As part of the Mass Bail Out Action, people who were released were put in touch with services,= and given a cell phone and unlimited two-month MetroCard to help them stay in touch with their attorneys and attend court. The phones were also used to provide court reminders.

office and the state's first judicial district to reduce their use of money bail. The resolution also calls on Pennsylvania's legislature and Supreme Court to amend state laws to "allow for the elimination of cash bail statewide."

Philadelphia has also announced plans to close one of its oldest prisons without opening a new one. Philadelphia has cut its prison population by one-third since joining the MacArthur Safety and Justice Challenge in 2016; 80 percent of its incarcerated population is awaiting trial or has an open case.

The **San Francisco Board of Supervisors** unanimously approved legislation to eliminate criminal justice fees for incarceration, probation, penalty assessments, and electronic monitoring. The proposal was supported by the Office of the Treasurer's Financial Justice Project, the Public Defender's Office, and the Mayor's Budget Office. A [study](#) of San Francisco's justice system fees found that only 17 percent were collected on the \$15 million accumulated over six years by 20,000 people.

State and Local-Level Reports

A report from the ACLU of Florida and its Greater Miami chapter demonstrates that racial and ethnic disparities occur at all decision points in Miami-Dade's criminal justice system. [Unequal Treatment: Racial and Ethnic Disparities in Miami-Dade Criminal Justice](#) shows that at the pretrial stage, black Hispanics are the least likely to bond out compared to whites, white Hispanics, and black non-Hispanics. Black Hispanics also have the longest periods of pretrial detention.

The **Georgia** Council on Criminal Justice Reform released a [report](#) outlining recommendations for improving the state's criminal justice system. The report includes recommendations specific to improving pretrial justice, with the goal of maximizing public safety, maximizing pretrial appearances, and maximizing personal liberty.

Recommendations include increasing the use of citations in lieu of arrest, using release with the least restrictive conditions, and implementing the use of pretrial assessment tools to aid judges in their decision-making; some of these recommendations have been enacted through S 407.

Nearly half of the people in jail in **Hawaii** have not been convicted of the charges against them, according to a new report from the ACLU of Hawaii. [Hawaii's Accused Face an Unequal Bail System](#) reported, moreover, that native Hawaiians and Pacific Islanders are disproportionately more likely to be unable to afford bail and that it takes roughly 90 days for a meaningful bail hearing to occur. The report offers 16 recommendations for reform, including the elimination of money bail, a bail hearing within 48 to 72 hours, and changes to the current bail statute to include a presumption of unconditional release for all arrestees regardless of crime. Read the full report [here](#).

The Chicago-based (**Illinois**) Coalition to End Money Bail released a [court-watching report](#) after Cook County implemented a new order that no person should be detained due to an inability to pay bail. [Monitoring Cook County's Central Bond Court](#) found that while the rule was effective in some instances—the use of money bail decreased by 48 percent after the order went into effect—nearly half of all money bonds issued were still unaffordable because judges were failing to follow the new order.

NEW A new [report](#) commissioned by the Boyle and Mercer County Fiscal Courts (**Kentucky**) to examine what steps could be taken to alleviate jail crowding suggests that bail-setting is a major factor. The two counties share a jail, the Boyle County Detention Center, and at the time the report was commissioned, its population was [181% of design capacity](#). A major cause of jail crowding is "[a]n apparent refusal to set non-financial bonds". The rate of release on non-financial bonds for circuit

courts was 3% in Mercer County and 4% in Boyle County for 2017, much lower than the statewide rate.

DataCenterResearch.org released a brief, [From Bondage to Bail Bonds: Putting a Price on Freedom in New Orleans](#). The brief traces the development of cash bail from its roots in slavery and post-bellum practices to modern practices, then explains the processes and costs of modern money bail. Finally, it presents some ways in which the city has been moving to a less harmful criminal legal system and offers models from jurisdictions that have rejected money-based detention as inconsistent with the core principle of innocent until proven guilty. **New Orleans** leads U.S. cities in jailing its residents.

The University of Baltimore School of Law's [Pretrial Justice Clinic](#) issued its second annual report in June. Clinic students represented 45 low-income **Marylanders** and secured the pretrial release of 15 clients in the 2017-2018 academic year. Seventy percent of all cases referred to the clinic had a disposition in which the arrested person obtained a favorable or partially favorable result, showing that many people are locked up pretrial on charges that ultimately go away.

The **Maryland** Office of the Public Defender released [Bail Reviewed: Report of the Court Observation Project](#). Members of the community observed bail review hearings to learn more about the pretrial process and to gather data about the implementation of a court rule change intended to curb reliance on money bail. Community members who participated found the lack of sufficient pretrial resources to be a critical factor in many of the bail review hearings. Court watchers found that bail reviews did not primarily result in the imposition of money bail, indicating a clear success of the rule change. However, a high number of people were held without bail for drug charges that did not

inherently suggest the individuals posed a danger to the public.

A report from the Baltimore City and Prince George's County (**Maryland**) branches of the NAACP provided quantifiable results from the state's court rule change to end the detention of people due solely to inability to pay money bail. [Advancing Pretrial Reform in Maryland: Progress and Possibilities](#) reported that, after the new court rule, the number of people assigned bail at initial hearings fell by 21 percent; that there was an increase in people both held without bail and released on recognizance; and that those assigned bail had amounts 70 percent lower than in 2015.

An [in-depth report on Mississippi's bail bond industry](#) by the Marshall Project, a nonprofit news organization covering the U.S. criminal justice system, reveals that the 193 bail bond companies in the state took in \$43 million in fees over 18 months, and that 36 percent of that revenue was from bonds of \$5,000 or less. The reporting was made possible by an October 2016 requirement by the Mississippi Department of Insurance that bond agencies report details of every bond they write. An [accompanying guide to the methodology of the Marshall Project report](#) revealed that three-quarters of bail agents in Mississippi are personal surety agents, meaning that after staking \$30,000 with the state, these agents are allowed to write an unlimited number of bonds.

The ACLU of Nebraska has launched a revolving [bail fund in Lancaster County](#) to facilitate the release of people who are jailed pretrial because they cannot afford money bail. The organization is also [collecting stories from people](#) who have been held in jail because of inability to pay.

NEW **New Jersey** reports that in the time since the state's pretrial justice reform measures took effect in 2017, serious crime has fallen significantly.

State Police statistics show that compared to 2016 data (January to September), homicides are down 32 percent in the same period for 2018. Rape, robbery, assault and burglary figures have also fallen significantly. Overall, violent crime is down more than 30 percent.

A [poll](#) conducted by FWD.us found overwhelming support for bail reform among **New York** voters. After being given the opportunity to hear from both sides of bail reform, more than 70 percent of respondents favored the elimination of pretrial detention for misdemeanors and nonviolent felonies. A majority of respondents also said it was a waste of money to lock up people charged with low-level offenses.

More than 90,000 people spent at least one day in jail on bail in **New York** state over the past five years, according to a newly published analysis of eight upstate counties by the New York Civil Liberties Union. Sixty percent were jailed pretrial on only a misdemeanor or violation and almost a quarter on a bail amount of \$500 or less. [Presumed Innocent for a Price](#) documents how the state's money bail problem extends far beyond New York City.

[Beyond the Myths: Making Sense of the Public Debate about Crime in New Mexico](#) is a new report from the **New Mexico** ACLU that separates fact from fiction after New Mexico's changes to its pretrial practices, both through a state constitutional amendment and changes to the state court rules. The report addresses issues such as pretrial assessments and the bail bond industry.

A [statewide poll commissioned by the ACLU of North Carolina](#) has found that support for bail reform is strong and cuts across political ideologies. Seventy-four percent of voters supported reforms to make release from jail while awaiting trial "less reliant on money and more dependent of the

circumstances of each individual case," including 77 percent of Democrats, 75 percent of Republicans, and 70 percent of independents.

NC Policy Watch, a project of the **North Carolina** Justice Center, specializes in providing news and analysis on policy issues relevant to the state. In a series of pithy pieces focused on bail, the nonprofit news center called out [perverse incentives created by for-profit bail, such as people asking for higher bail amounts because they cannot get bonds written by bondsman for smaller amounts; corruption in the North Carolina bail bond industry; and the success of Mecklenburg County's pretrial release system](#), which employs the Laura and John Arnold Foundation Public Safety Assessment and in 2015 had a 98 percent court appearance rate and a 93 percent public safety rate.

After 18 months of studying the bail system in the county, the Cuyahoga County (**Ohio**) Bail Task Force has released a [report](#) on its findings and recommendations. The task force, which was appointed by Court of Common Pleas Presiding Judge John Russo, calls for a "transition from a bail system based on bond schedules, which vary widely from one [municipal] court to the next, to a centralized, consistent, and comprehensive system of pretrial services initiated immediately after arrest."

In response to growing litigation around the issue, a Montgomery County, **Ohio**, commission made up of diverse stakeholders, including judges, court administrators, defense attorneys, and prosecutors, made [new recommendations](#) to improve pretrial practices. While courts felt that bail schedules and practices were generally effective, Public Performance Partners (P3) "discovered a different narrative occurring in the data." P3 found that more than one out of three people were at risk of failing to appear and that 27 percent would be charged with a new crime. The commission recommended moving

toward an expanded, regional pretrial services model and moving away from money bail.

NEW [“You Miss So Much When You’re Gone”](#): [The Lasting Harm of Jailing Mothers Before Trial in Oklahoma](#) documents the particular devastation of pretrial detention on women, in the state that has incarcerated more women per capita than any other state since the 1990s. Human Rights Watch and the ACLU, the authors, note that “This report finds that jailed mothers often feel an added, and unique, pressure to plead guilty so that they can return home to parent their children and resume their lives...Some risk losing custody of their children because they are not informed of, or transported to, key custody proceedings.” It is estimated that nearly 80% of women in jails have minor children.

After requesting data for 12 county jails, **Oklahoma** Watch [found wide disparities](#) among nonmonetary releases for people charged with misdemeanor offenses, ranging from no releases in Adair County to 63 percent in Comanche County in 2017. Several counties have taken steps to address these issues. Working with the Vera Institute, the then-presiding district judge for Rogers County issued an administrative order establishing a nonmonetary release program for nonviolent offenses, raising the county’s pretrial release rate for misdemeanors from 3.8 percent to nearly 60 percent in one year. In December 2017, Oklahoma County raised its nonmonetary releases to 22 percent, compared with 8 percent a year earlier, resulting in a record low jail population.

In a [letter](#) sent to the presiding judges of the **Philadelphia** court systems, the ACLU of

Pennsylvania outlined several concerns about unconstitutional bail practices and asked for a meeting to discuss remedies. The organization, which sent the letter after observing approximately 650 arraignment proceedings, noted that it hoped that by working together, “litigation to ensure necessary reforms will not be needed.”

NEW **Texas** Office of Court Administration Director David Slayton reported that 2017 legislation to eliminate “debtors prisons” is achieving its intent. The [new law](#) ended the practice of jailing people for unpaid fines and allows judges to order community service in lieu of fines or even waive them. According to Slayton, the number of warrants for failure to appear is declining, the number of warrants for failure to pay is also declining, and the number of cases resolved through jail credit is declining. At the same time, the number of cases resolved through community service is increasing, the number of defendants getting on payment plans has increased, and collections per case have increased by 6.7 percent at the local level and 7.3 percent at the state level.

NEW Justice Forward **Virginia**, a non-partisan organization whose purpose is to “bring attention to the urgent need for criminal justice reform in the Commonwealth -- at the most fundamental level -- and to support candidates for state and local office who advocate for comprehensive reforms to our justice system,” has made bail reform one of its key issues. A “Bail Reform Happy Hour” featured legislators and candidates for commonwealth’s attorney, who discussed the role of local prosecutors in shaping bail policies.

Activity by Region and State

Following is a list presenting the major pretrial improvements described above as of December 2018, organized by state.

	Changing Practice	Judiciary-Led	Pretrial Litigation	Pretrial Legislation	Executive-Led	Community & Grassroots-Led
Alabama			●	●		
Alaska						
Arizona				●		
Arkansas						
California		●	●	●	●	●
Colorado	●	●	●	●		
Connecticut				●		
Delaware				●		
Florida	●		●	●		●
Georgia		●	●	●		●
Hawaii				●		●
Idaho						
Illinois				●	●	●
Indiana	●		●	●		
Iowa	●			●		
Kansas		●				
Kentucky		●				
Louisiana			●	●		●
Maine						
Maryland		●	●	●		●
Massachusetts	●	●		●	●	
Michigan				●		
Minnesota						●
Mississippi						●
Missouri				●		●
Montana						
Nebraska						●
Nevada						
New Hampshire		●		●		
New Jersey			●			
New Mexico			●			●
New York				●	●	●
North Carolina	●	●	●			●
North Dakota						
Ohio				●		●
Oklahoma		●		●		●
Oregon						
Pennsylvania					●	●
Rhode Island						
South Carolina			●			
South Dakota						
Tennessee	●		●	●		
Texas	●		●			
Utah		●				
Vermont	●			●		
Virginia	●	●		●		
Washington				●		
West Virginia						
Wisconsin						
Wyoming						

List of acronyms

ACLU	American Civil Liberties Union	NCJRP	National Criminal Justice Reform Project
BJA	Bureau of Justice Assistance	NCSC	National Center for State Courts
CPAT	Colorado Pretrial Assessment Tool	NCSL	National Conference of State Legislatures
CRC	Civil Rights Corps	NGA	National Governors Association
CSG	Council of State Governments	NIC	National Institute of Corrections
DOJ	Department of Justice	OSF	Open Society Foundations
EBDM	Evidence-Based Decision Making	PJI	Pretrial Justice Institute
EJUL	Equal Justice Under Law	PSA	Public Safety Assessment
IACP	International Association of Chiefs of Police	SJC	Safety and Justice Challenge (MacArthur Foundation)
JDAI	Juvenile Detention Alternatives Initiative	SJI	State Justice Institute
JRI	Justice Reinvestment Initiative	SPLC	Southern Poverty Law Center
LEAD	Law Enforcement Assisted Diversion	SONG	Southerners on New Ground
LJAF	Laura and John Arnold Foundation	STEER	Stop, Triage, Engage, Educate, and Rehabilitate
LJAF PSA	Laura and John Arnold Foundation Public Safety Assessment	TAD	Treatment and Diversion
NACo	National Association of Counties	TASC	Treatment Alternatives for Safe Communities
NCJA	National Criminal Justice Association		