Current Pretrial Justice - Perceptions -

- Crime has a price
- Bond seen as payment for crime
- Compliance is financially rewarded
- Bond works pretty well
- Jails are used to protect and punish
- Intuition is usually right
Purposes of the Bail Decision

1. Provide due process for those accused of crimes
2. Maintain the integrity of the judicial process by securing defendants for trial
3. Protecting victims, witnesses, and the community
Bail determinations must be:

- based on standards relevant to assure appearance

- individualized to each defendant
“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

--Chief Justice William Rehnquist
Arrest and Booking Rates Per 100,000

Crime and Jail Rates per 100,000

Unconvicted Inmates: Driving Jail Increases Since 1990

Since 1990, the number of unconvicted individuals in U.S. jails has increased by 126%, accounting for 77% of the total increase in jail populations.

Let’s do the math!

Since 1990, total jail populations have increased by 84%.

\[
\begin{align*}
\text{2014} & \quad 745,000 \\
\text{1990} & \quad - \quad 405,000 \\
\hline
340,000 & \div 405,000 = \uparrow 84\%
\end{align*}
\]

During this time, the number of unconvicted people in jail increased by 126%.

\[
\begin{align*}
\text{2014} & \quad 468,000 \\
\text{1990} & \quad - \quad 207,000 \\
\hline
261,000 & \div 207,000 = \uparrow 126\%
\end{align*}
\]

So, unconvicted individuals accounted for 77% of the increase in total jail populations since 1990.

\[
\begin{align*}
\text{1990} & \quad 261,000 \\
\text{2014} & \quad \div \quad 340,000 = 77\%
\end{align*}
\]

Average Money Bail For Felony Defendants

After adjusting for inflation, this represents a 43% increase over 17 years.
Why Do We Care?

Increase in New Criminal Arrest Low-Risk Defendants*

- 2-3 Days: 39%
- 4-7 Days: 50%
- 8-14 Days: 56%

Increase in 2-Year Recidivism Low-Risk Defendants*

- 2-3 Days: 17%
- 4-7 Days: 35%
- 8-14 Days: 51%

“...defendants who are high-risk and/or violent are often released... nearly half of the highest-risk defendants were released pending trial.”

-Developing a National Model for Pretrial Risk Assessment, Laura & John Arnold Foundation
Impact of pretrial incarceration: employment, education, family & crime

Even short stints in jail before trial lead to an increased likelihood of missing school, getting fired from jobs, increased desperation, and as a result, a higher risk of being arrested again.
Outcomes of Pretrial Incarceration

Compared to defendants released at some point prior to trial, defendants held for the entire pretrial period had:

- 4x greater likelihood of being sentenced to jail
- 3x longer jail sentences
- 3x greater likelihood of being sentenced to prison
- 2x longer prison sentence
Using Risk Assessment

- Measures likelihood of pretrial failure/success: court appearance, re-arrest.
- Results used to inform release/detain decision.
- Results used to determine level of supervision, if any.
- Empirically valid tools reduce racial and economic disparities inherent in money bail systems.
Risk Category Distribution

“It is the position of the United States that, as courts have long recognized, any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses in order to gain pre-trial release, without any regard for indigence, not only violates the Fourteenth Amendment’s Equal Protection Clause, but also constitutes bad public policy.”

Statement of Interest, Varden v. City of Clanton, 2015
69% of voters believe the criminal justice system favors the rich. Only 13% strongly believe it treats everyone equally.

Lake Research Partners, Key Findings on Recent Public Opinion Research: Pretrial Risk Assessment, August 2015.
Public Opinion: Support for Citation in Lieu of Arrest

Lake Research Partners, Key Findings on Recent Public Opinion Research: Pretrial Risk Assessment, August 2015.
Public Opinion: Risk Assessment vs. Cash Bail

Lake Research Partners, Key Findings on Recent Public Opinion Research: Pretrial Risk Assessment, August 2015.
Call to Action
<table>
<thead>
<tr>
<th>Risk Category</th>
<th>Public Safety Rate</th>
<th>Court Appearance Rate</th>
<th>% of Defendants</th>
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<tbody>
<tr>
<td>1</td>
<td>91%</td>
<td>95%</td>
<td>20%</td>
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<tr>
<td>2</td>
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<td>85%</td>
<td>49%</td>
</tr>
<tr>
<td>3</td>
<td>69%</td>
<td>77%</td>
<td>23%</td>
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<tr>
<td>4</td>
<td>58%</td>
<td>51%</td>
<td>8%</td>
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</table>
Case Study: Washington, DC

- 80% of defendants released non-financially
- 15% detained without bail
- 5% have financial bonds
- 88% make all court appearances
- 88% have no rearrests
What Legislatively is Needed

- No right to bail
- Requirement to use risk at pretrial
- Workable preventive detention statute
- Elimination of bond schedules and $ bond

- Statute can change culture
  - Change behavior
  - Provide for remedy if not
A campaign to apply practical solutions to widespread pretrial justice challenges, making our country safer and ensuring the best possible outcomes for all.

In 20 states by 2020.
Reduce unnecessary arrests that destabilize families and communities

Replace discriminatory cash bail with practical, risk-based decision-making

Enable transparent detention for the small number of defendants who pose a genuine threat to public safety
October 22, 2015 – state enrollment open!

www.pretrial.org/3DaysCount
"Criminal defendants, presumed innocent, must not be confined in jail merely because they are poor. Justice that is blind to poverty and indiscriminately forces defendants to pay for their physical liberty is no justice at all."

—US Court, Middle District of Alabama, September 14, 2015