



Health Policy Brief

Connections between criminal justice and health

Pretrial incarceration and the bail system

Every Ohioan wants to live in a community that is safe, provides opportunities for good health and where their families can flourish. This policy brief examines the impact of pretrial incarceration and the money bail system on the health, safety and well-being of Ohioans and their communities.

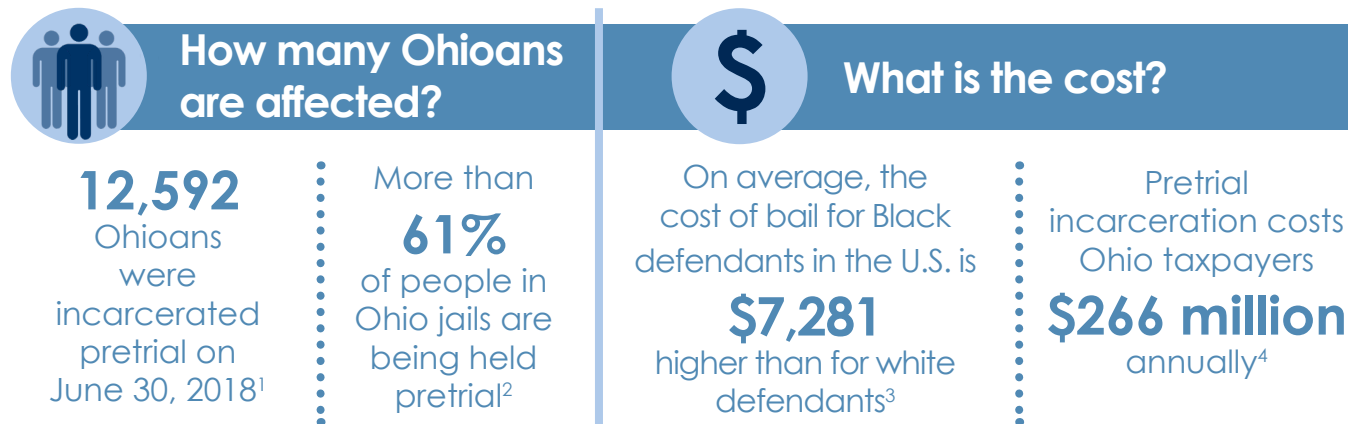
For several years, policymakers across Ohio have been engaged in bipartisan efforts to reform the money bail system with the goal of increasing safety and justice in Ohio communities. Because of the many **connections between criminal justice and health**, research indicates that bail reform will have positive impacts on the health and well-being of Ohioans. However, the path to policy change has been difficult and thousands of people continue to be incarcerated before being convicted of a crime.

Figure 1 shows the scope of the problem and the significant costs of the current pretrial system. Ohio must now look to research evidence and promising practices in other states to illuminate a clear path forward for effective policy change. By implementing evidence-based reforms to the money bail system, policymakers can improve health, advance equity and reduce healthcare and criminal justice spending in Ohio.

3 key findings for policymakers

- **Pretrial incarceration leads to negative outcomes.** Incarceration before conviction often harms individual and community health, safety, family well-being and financial stability.
- **Ohio's current bail system is unfair and inequitable.** Money bail, which incarcerates people pretrial based on their ability to pay for release, is a barrier to justice for many Ohioans, especially Black Ohioans and those with low incomes.
- **Evidence-based reforms exist.** State and local governments across the country have made changes to their pretrial systems, and research shows promising results.

Figure 1. Snapshot on pretrial incarceration and bail in Ohio, 2018



Note: Unjust biases, policies and structures, including bias in criminal justice data, result in bail amounts for Black defendants that are often higher than bail amounts for white defendants.

This brief:

- Examines the impacts of pretrial incarceration on individuals and communities
- Describes the current state of pretrial policy in Ohio and promising bail alternatives in other states
- Provides state and local policy options to reform the money bail system

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Data gaps

The data presented in figure 1 is the most updated data available on pretrial incarceration and bail in Ohio. Data on pretrial incarceration and money bail is very limited.⁵ Ohio does not have a statewide data collection system for criminal charges, bail decisions, convictions or sentences, and the most recent national data on the self-identified demographics of people incarcerated pretrial were collected in 2002.⁶ The lack of available and representative criminal justice data presents a significant barrier to accurate evaluation of pretrial incarceration, and leaves policymakers without the information needed to make critical policy decisions related to the safety and well-being of our communities.

Definitions

Bail: Bail refers to the conditions a person must meet to be released from jail before trial. This includes money bail, but also includes other conditions, like regular check-ins with a probation officer and drug testing.

Jails: Jails are operated at the county level and are used for three main purposes:

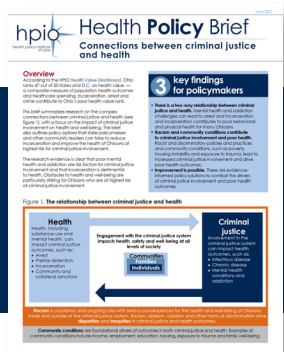
- Short-term holding for individuals who were recently arrested
- Pretrial incarceration of people who have not yet been convicted, but who were not eligible or could not afford bail
- Incarcerating people convicted of crimes and sentenced to less than one year of imprisonment

Pretrial incarceration: The detention of a criminal defendant before the trial has taken place. All people incarcerated pretrial are held in local jails, as opposed to prisons.

Prisons: Prisons are operated by state governments, the federal government or private entities and used for long-term incarceration of people convicted of felonies and individuals with sentences longer than one year.

Learn more about the relationship between criminal justice and health in HPIO's brief:

Connections between criminal justice and health



What happens during the pretrial period?

Figure 2 illustrates a simplified version of the pretrial process, which begins after a person is arrested and charged with a crime. During the pretrial period, the person who has been charged is called the “defendant” because they are going through a legal process to defend themselves against the criminal charges filed. Throughout this process, the law assumes that the defendant is innocent until the prosecution can prove, beyond a reasonable doubt, that they are guilty.⁷ Still, many defendants are in jail while they await trial because they cannot afford to pay bail.

Figure 2. **Pretrial process**

1

Criminal charge

- A person is arrested and becomes a criminal defendant
- The prosecutor files a criminal charge with a local court
- For the defendant to be convicted, the prosecutor is required to prove “beyond a reasonable doubt” that the defendant committed the crime

2

Arraignment (hearing)

- The defendant is informed about the charge against them and about their rights, including the right to an attorney
- The defendant enters their initial plea, which is almost always “not guilty”
- The judge sets a trial date and the conditions for bail

3

Additional proceedings and plea deals

- The next step in the process may be a pretrial conference, where plea deals are negotiated
- Future hearings decide whether the prosecutor has enough evidence and what evidence is admissible at trial
- If the defendant does not plead guilty at any of the additional hearings, the case goes to trial

At the initial hearing, judges can set several different types of bail requirements. “Bail” refers to the conditions a person must meet to be released from jail before trial. This includes money bail, but also includes other conditions, like regular check-ins with a probation officer or drug testing.⁸ The different types of bail requirements are described below⁹:

- ▶ **Unconditional release (or “release on recognizance”).** Release from jail with a promise to appear for future court hearings; release can occur immediately after arrest or after the initial hearing (“arraignment”).
- ▶ **Conditional release (or supervised release).** Release from jail under specified conditions, such as supervision with a case manager, mandatory substance use treatment, travel restrictions, electronic monitoring or mandatory educational or vocational programs.
- ▶ **Money bail.** Release is only possible after a payment is made. There are three ways that bail payments can be made in Ohio:
 - Unsecured bond: Defendant pays the assigned amount only if they fail to appear at a future court hearing
 - Secured bond: Defendant pays a 10% deposit of the assigned amount and pays the rest of the amount if they fail to appear at a future court hearing
 - Surety bond: Defendant cannot afford the payment amount and secures the bond another way, such as through a relative, friend or bail bond agency who makes the payment on their behalf
- ▶ **Preventive detention.** Bail is denied to individuals who are considered by the judge to be a threat to public safety; these individuals remain incarcerated while awaiting trial.

Pretrial incarceration and public safety

The **United States** and **Ohio** constitutions prohibit the use of excessive bail to incarcerate defendants pretrial, with few exceptions.¹⁰ However, preventive detention is an accepted method under current Ohio law (**ORC 2937.222**), that allows defendants to be jailed without bail for reasons of public safety or the safety of individual people. Either the prosecutor or the judge can request a preventive detention hearing, where the prosecutor must prove that:

- There is clear evidence the defendant committed the offense
- The defendant poses a substantial risk of physical harm to others
- No release conditions would assure the safety of others

When defendants are assigned a money bail payment that they cannot afford to pay, they remain incarcerated in jail while they go through additional hearings and await their trial. The process can last anywhere from several weeks to many months, depending on the type of offense and the unique factors of the case.¹¹ The original purpose of the money bail system was to ensure that defendants attended their court hearings. However, research shows that even when not required to pay a bond, the vast majority of people do return for hearings. For example, Washington D.C. releases 94% of all defendants without using money bail, and approximately 90% of those individuals return for every court appearance.¹²

Over time, preventing people who pose a “risk of danger to the community” from being released before facing trial has become another purpose of the bail system.¹³ Research finds, however, that people who are released pretrial are highly unlikely to engage in violent crime. A study from 2018 found that less than one percent of defendants are rearrested for a violent crime during the pretrial period.¹⁴

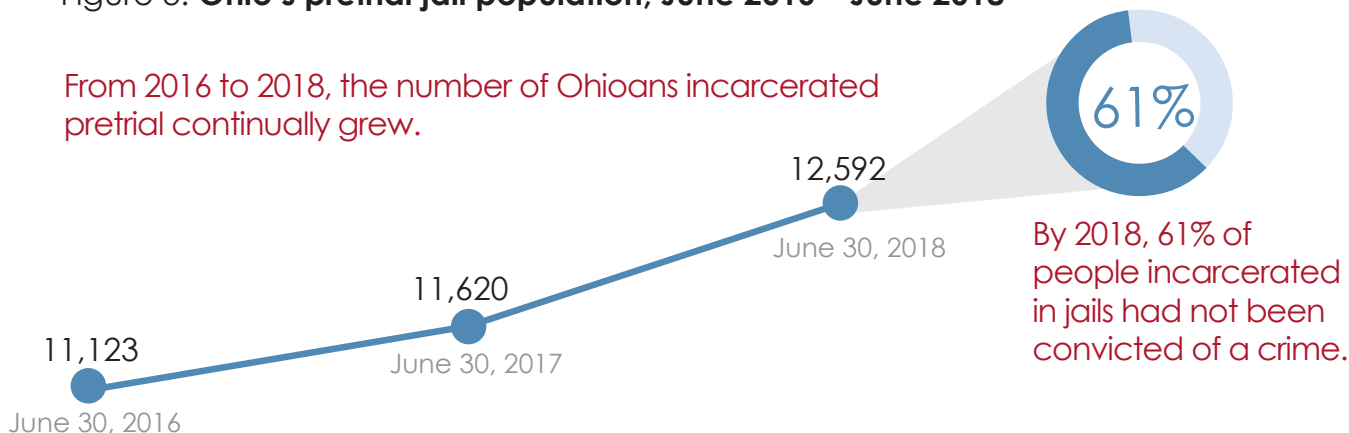
Why is action needed now?

Ohio's money bail system incarcerated nearly 12,600 Ohioans on a single day and cost \$266 million in 2018 (see figure 1). Analysis from 2019 found that approximately 150,000 people are booked into local Ohio jails each year.¹⁵ The number of Ohioans incarcerated pretrial has increased since 2016, and 61% of people in local jails have not been convicted of a crime (see figure 3).

Pretrial incarceration is costly to those incarcerated and to Ohio taxpayers. Research also indicates that money bail negatively affects the health, safety and well-being of incarcerated people, their families and their communities. Action on bail reform is needed to:

- Improve physical and mental health
- Increase community safety
- Support family well-being
- Strengthen financial stability
- Promote equity and justice

Figure 3. **Ohio's pretrial jail population, June 2016 – June 2018**



Note: “Incarcerated pretrial” is defined as the number of people who are unsentenced and incarcerated in Ohio jails. This data was collected by the jails for June 30 of each year, provided to the Department of Rehabilitation and Corrections (DRC) and is not verified by DRC.

Source: Data provided by the DRC Bureau of Adult Detention to the Supreme Court of Ohio Task Force to Examine the Ohio Bail System, Feb. 21, 2019.



Physical and mental health

Poor jail conditions, such as overcrowding, lack of sanitation and inadequate nutrition, contribute to poor health among incarcerated people.¹⁶ Mental health conditions and substance use disorders can also be caused or exacerbated by exposure to violence in jail and access to illicit substances that are trafficked into jails.¹⁷

Major barriers to health care also exist inside jails. Jails are poorly equipped to provide health care and typically have few or no medical professionals on staff.¹⁸ Even if people in jail have access to a healthcare professional, medical copays can be unaffordable.¹⁹ These barriers can lead to medical neglect for incarcerated people. One study found that 68% of people with “persistent medical problems” who were incarcerated in local jails did not receive a medical examination.²⁰ Additionally, disruption to care, including barriers to accessing necessary medications, can lead to worsening health conditions for people in jail.²¹

Because people in jails are likely to return to the community in a relatively short timeframe, their poor health impacts the health of communities at large. For example, communities with high incarceration rates also have higher rates of infectious diseases, like hepatitis C and COVID-19.²² Additionally, people who were jailed are also at significant risk of experiencing addiction relapse and overdose upon release.²³

For more on the health impacts of incarceration, see HPIO's policy brief [Connections Between Criminal Justice and Health](#).



Community safety

Pretrial incarceration does little to improve community safety. While people incarcerated pretrial cannot commit crimes in the community, research finds that the threat of incarceration does not prevent crime and having been incarcerated does not deter people from committing future crimes.²⁴ In fact, pretrial incarceration increases the chances that the person will commit a crime in the future.²⁵

Most people in Ohio who are incarcerated pretrial are incarcerated for nonviolent offenses. In 2020, a study of four Ohio counties found that 63% of people were held pretrial for a crime that did not involve contact with another person.²⁶ Additionally, a national review of bail reform evaluations found that no bail reform effort in the nation has led to a meaningful increase in crime—rearrest rates for people on pretrial release either increased very slightly or there was no statistically significant change after reform.²⁷ There is no evidence that shows a causal relationship between money bail and community safety.

Aside from money bail, judges have other methods to monitor and detain criminal defendants (refer to “conditional release” and “preventive detention” on page 3).

Victims' rights pretrial

Ohio law ([ORC 2930](#)) identifies the rights of crime victims at each step of the legal process. During the arrest and pretrial period, victims have the right to be notified by law enforcement of the name of the person arrested and detained, information on whether the defendant is eligible for pretrial release and information on how to check the status of the defendant's bond and custody.²⁸

The law also includes the rights of victims who are being threatened or harmed by defendants who are released from custody pretrial. If the defendant has been released from custody on bail or on unconditional release, and the prosecutor has a sworn statement from the victim stating that the defendant has committed or threatened to commit acts of violence or intimidation against the victim, the prosecutor can file a motion asking the court to reconsider the pretrial release conditions or to consider incarcerating the defendant pretrial.²⁹



Family well-being

Pretrial incarceration disrupts social support networks for people who are incarcerated, as well as their families and communities. When parents are in jail or prison, families are destabilized and children experience trauma, perpetuating generational cycles of poverty, incarceration and poor health.³⁰

There are many barriers to maintaining relationships with loved ones who are incarcerated, including transportation to correctional facilities and the cost of phone and video calls. Additionally, children may have been removed from their parent's custody and placed in foster care, creating further separation from their community while their parent is incarcerated.³¹

Sometimes, family well-being requires families to be separated, such as in cases of domestic violence. For example, the purpose of Amy's law, [ORC 2919.251](#), (known as Amy's law after the survivor of domestic violence who advocated for the law in 2005) is to ensure that survivors of domestic violence remain safe while the case is investigated and adjudicated. The law requires police officers to do a risk assessment during the arrest. Judges are provided with that assessment during the bail hearing, and must consider 10 risk factors (including history of domestic violence, mental health and substance use issues and the severity of the offense) when setting bail amounts in these cases.



Financial stability

Pretrial incarceration diminishes short- and long-term economic opportunity and financial stability for incarcerated Ohioans and their families. When Ohioans are incarcerated while awaiting trial, they are unable to work and may even be unable to contact their employers, leading to disciplinary action or job loss. Even Ohioans who are found not guilty of criminal charges can lose their jobs because they were incarcerated pretrial. Additionally, pretrial incarceration contributes to increased rates of poverty and growth in the racial wealth gap for defendants, their families and their communities.³²

The cost of money bail itself impacts financial stability, and bond amounts are typically assigned without an assessment of a defendant's ability to pay.³³ Because people incarcerated pretrial are more likely to agree to plea deals, they are also more likely to face collateral sanctions—laws that bar people with criminal records from accessing certain employment, housing, education and other opportunities.³⁴ Collateral sanctions impact the financial stability of people incarcerated pretrial. Finally, defendants who rely on bail bond agents to make their bail payments may be victims of predatory and/or aggressive collection practices, further diminishing the financial stability of defendants and their families.³⁵

Plea deals and pretrial incarceration

When people are incarcerated pretrial, they are more likely to agree to plea deals. Plea deals, or plea bargains, are offers made by prosecutors to defendants. If the defendant agrees to the deal, they agree to plead guilty to the offense in exchange for a lesser charge (e.g., the defendant is charged with burglary, but they agree to plead guilty to trespassing if the prosecutor drops the burglary charge). By agreeing to the deal, the defendant will likely receive a lesser sentence from the judge, and they can also be released from pretrial incarceration more quickly because they are no longer awaiting a full trial. For this reason, research finds a strong connection between pretrial detention and guilty pleas.³⁶ Research also shows that anywhere from 90-95% of all criminal cases are resolved by plea deal.³⁷



Equity and justice

The money bail system, by design, disproportionately impacts people with low incomes. Two defendants with the same criminal charge and bond amount can have very different pretrial experiences depending on their ability to pay. Defendants with low incomes are often incarcerated pretrial, while defendants with higher incomes can afford to be released. Due to the impact of money bail, research shows that people in jail are poorer, on average, than people in prison and are drastically poorer than people who are not incarcerated.³⁸ In 2015, people who were incarcerated pretrial had a median annual income of \$15,109 prior to incarceration, which is less than half (48%) of the median income of people of similar ages who were not incarcerated.³⁹

Before they were incarcerated, people in jail pretrial had a median annual income of

\$15,109

Note: In 2015 dollars

Source: Prison Policy Initiative, 2016

Ohioans of color also experience disparities in pretrial incarceration. These differences exist because of historical and modern-day policies and practices that create injustices in the legal system. For example, the Bail Reform Act of 1984 gave judges the discretion to incarcerate individuals before trial by deeming them a threat to public safety or a flight risk.⁴⁰ This additional discretion allowed explicit and implicit bias to infiltrate judgements, and as a result, both bond amounts and the number of Black people incarcerated pretrial grew significantly.⁴¹

These systemic injustices create barriers for Black Ohioans across the criminal justice system. Black people are more likely to be stopped and searched by police, are held in pretrial incarceration for significantly longer periods for the same charges and are more likely to receive higher bail amounts than white people.⁴² An analysis of data from Cuyahoga County, Ohio—one of the only Ohio counties where such data is available—finds that:

- Black individuals were more likely to have a bond set over \$10,000 and more likely to be denied release compared to white individuals charged with a crime in the same category.
- Black people in Cuyahoga County were nearly seven times more likely than white people to be in jail pretrial on a felony charge.⁴³

For more information on the role of race in the criminal justice system, see HPIO's policy brief [Connections between criminal justice and health: Insights on justice and race](#).

Pretrial policy in Ohio

There have been several recent changes to the pretrial system in Ohio. Both the Supreme Court of Ohio and the Ohio General Assembly have been engaged in policy change related to bail.



Supreme Court of Ohio

In 2019, the Supreme Court of Ohio's **Task Force to Examine the Ohio Bail System** released their **Report and Recommendations**. The report includes nine specific recommendations for Ohio policymakers, including:

- Amend Ohio's Pretrial Release and Detention Rule (Criminal Rule 46)
- Tailor pretrial services to the needs of the defendant
- Consider all alternatives to pretrial incarceration during arrest and initial charges
- Implement a statewide, uniform data collection system for the pretrial process

Many of these recommendations have not been implemented. However, in 2020, Ohio **Criminal Rule 46** was amended to require courts to release defendants on "the least restrictive conditions" that, in the court's discretion, will ensure the defendant's appearance in court and the safety of the community. The rule includes a list of conditions that courts must consider when making bail decisions, including the defendant's risk of not appearing in court, the seriousness of the offense and the defendant's previous criminal record. Additionally, the rule establishes a preference that courts release individuals on their "personal recognizance" (i.e., unconditional release).

Criminal Rule 46 also requires courts to establish a bail bond schedule for all misdemeanor offenses. The purpose of a bail schedule is to have bail prices set in advance so that defendants can pay the bond and be released without a hearing in front of a judge. Another court rule (**Superintendence Rule 5.02**), adopted in 2021, requires counties with multiple municipal courts to adopt a uniform bail schedule so that all courts in the county have the same bond amount for each type of misdemeanor offense. Twenty-eight Ohio counties have multiple courts in the same county and are now required to develop multi-county bail schedules.⁴⁴



Ohio General Assembly

Legislators in the Ohio General Assembly are also considering reforms to the state's pretrial and bail system. In May 2021, companion bills were introduced in the House and Senate that would create a presumption of unconditional release and restrict the use of money bail. These bills—**House Bill 315** and **Senate Bill 182**—have received several committee hearings, but have not yet been put to a floor vote in either the House or the Senate.

Additionally, some legislators are seeking to expand pretrial incarceration in Ohio. In June 2022, the legislature passed **House Joint Resolution 2**, which creates a ballot initiative for the November 2022 election. If approved by voters, this ballot initiative would amend the Ohio Constitution, shifting the responsibility for establishing bail amounts and conditions from the Supreme Court of Ohio to the Ohio General Assembly. This would mean that instead of bail conditions being set by **Criminal Rule 46**, they would be set by legislation. The ballot initiative would also add a requirement to the Ohio Constitution that, when determining the amount of bail, courts must consider public safety. Additionally, **House Bill 607** (HB 607) would require that public safety be considered when setting bail amounts, adding this language to the Ohio Revised Code, rather than the Ohio Constitution. HB 607 has been "informally passed" by the House (the bill has enough votes to pass) but will need a floor vote before it goes to the Senate for further consideration.

Promising alternatives to money bail: State and local examples

There are opportunities for Ohio to move toward a safer and more equitable pretrial process. Various state and local governments have enacted alternatives to their bail systems, and research evaluations show promising results. These alternatives include expanding unconditional release and increasing access to pretrial services. The following state and local examples are gathered from Harvard University's [The Current State of Bail Reform in the United States: Results of a Landscape Analysis of Bail Reforms Across 50 States](#). Importantly, the state and local governments mentioned below implemented more than one bail reform measure, and the outcomes could be a result of multiple reforms working at once.

Unconditional release

Unconditional release (i.e., release on recognizance) is release from jail with a promise to appear for future court hearings. After expanding the use of unconditional release, jurisdictions have seen positive outcomes, including:



In 2014, New Jersey enacted state legislation that significantly altered the state's pretrial process, including establishing a presumption of release, adopting risk assessment and expanding pretrial services. After implementation of the new law, New Jersey saw a 36.2% decline in the jail population and 40% decrease in the average amount of days people spend in jail. Additionally, there was no meaningful change in the percentage of people who were rearrested while on pretrial release or in the rate of court appearance. However, racial disparities in pretrial incarceration remain an area of concern for New Jersey.



By administrative order in 2017, the Chief Judge in Cook County, Illinois (which includes Chicago) created a presumption of release without money bail for most defendants and required judges to set bonds within the defendant's financial means. Research identified a substantial increase in the number of people being unconditionally released and saw no statistically significant change in recidivism rates or the overall crime rate following reform.



Harris County, Texas (which includes Houston) adopted bail reforms in 2019 as a result of a court case in which several people sued the county for setting unaffordable bail amounts to detain people pretrial. As a result of the litigation, Harris County amended its local bail ordinance to require unconditional release of defendants charged with most misdemeanors. People who do not qualify for immediate unconditional release must be given a hearing within 48 hours and any bail amount set must be within a defendant's ability to pay. After this change, researchers found that there was no increase in recidivism rates among people released pretrial. Additionally, the gap in pretrial release rates for Black and white defendants narrowed, indicating that the pretrial process was more equitable.

Pretrial services

Pretrial services, such as court date reminders and behavioral health supports, are services provided by courts to help defendants appear for hearings without the need for pretrial incarceration. Using pretrial services to reduce the number of people incarcerated pretrial is a promising method of bail reform. After expanding the use of pretrial services, jurisdictions have seen positive outcomes, including:



The warden of the County Detention Center in St. Mary's County, Maryland led the implementation of a Pretrial Screening and Supervision Program in 2015. They found a 33% decline in their overall jail population in the program's first year. Additionally, 91% of individuals released were not arrested for new offenses during the pretrial period (pre-program data are not available for comparison).⁴⁵



In 2016, Yakima County, Washington implemented several pretrial services, including access to public defenders at preliminary hearings and the creation of a pretrial services agency that provided court date reminders and other services. The county saw a significant improvement in appearance rates and saw no significant change in recidivism rates.

Policy options

Policymakers at the state and local level can improve health, safety and well-being for every Ohio community and create more equitable pretrial systems by advancing promising alternatives to money bail.⁴⁶

All policymakers and stakeholders

To promote equity in the criminal justice system, policymakers and other stakeholders at the state and local level can:

- Require implicit bias assessment and training on historical injustices and trauma for all individuals working within the criminal justice system
- Promote the use of guidance documents and standardized processes for decision-makers across the criminal justice system to eliminate racial bias and untrue perceptions of behavior
- Assess proposed criminal justice policies and analyze current laws to identify racially disparate impacts
- Allocate funding and resources for addiction prevention, safe and affordable housing, job training, community-based violence prevention and criminal justice diversion programs to ensure communities of color have equitable access to services and supports

For more recommendations to advance equity in the criminal justice system, see HPIO's brief [Connections Between Criminal Justice and Health: Insights on Justice and Race](#)

Courts

The Supreme Court of Ohio and local courts can make changes to court rules that:

- Establish a presumption of unconditional release for people charged with misdemeanor offenses and/or other specified crimes
- Eliminate money bail and, instead, utilize pretrial services and conditional release (e.g., supervision with a case manager, travel restrictions, electronic monitoring) when necessary
- Consider a defendant's ability to pay when setting bail if money bail is used
- Create automated court reminder systems, including the date, time and location of the hearing
- Ensure the presence of counsel at bail decision hearings
- Increase access to court, including extending court hours to include nights and weekends and holding court hours at community locations, such as schools, churches and community centers
- Increase data collection and transparency related to initial hearings, bail decisions and criminal sentences

Local governments

City and county governments can pass local ordinances to:

- Establish a presumption of unconditional release for people charged with misdemeanor offenses and/or other specified crimes
- Eliminate money bail and, instead, utilize pretrial services and conditional release when necessary
- Expand pretrial services, including court date reminders and behavioral health supports
- Increase data collection and transparency related to criminal charges, bail decisions and defendant demographics

Prosecutors

County prosecutors can establish policies that:

- Refrain from requesting money bail for people charged with certain crimes, such as misdemeanors
- Increase data collection and transparency related to criminal charges, bail requests and plea deals

State legislature

The Ohio General Assembly can pass legislation to:

- Establish a presumption of unconditional release for people charged with misdemeanor offenses and/or other specified crimes
- Establish a right to counsel for bail decision hearings
- Require that judges consider a defendant's ability to pay when setting bail if money bail is used
- Create or expand pretrial services programs
- Increase data collection and transparency related to criminal charges, bail decisions, criminal sentences and defendant demographics

Notes

1. "Incarcerated pretrial" here is defined as the number of people who are sentenced and incarcerated in Ohio jails on June 30, 2018. This data is provided by the jails to the Department of Rehabilitation and Corrections (DRC) and is not verified by DRC. Data provided by the Bureau of Adult Detention. Memo to the Supreme Court of Ohio Task Force to Examine the Ohio Bail System. Provided Feb. 21, 2019. <https://www.supremecourt.ohio.gov/Boards/bailSys/speakerMaterials/JailPopData.pdf>
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