
Overview of current bail and sentencing reforms.

Impact, outcomes, and examples from other jurisdictions

Marta Nelson, Esq.

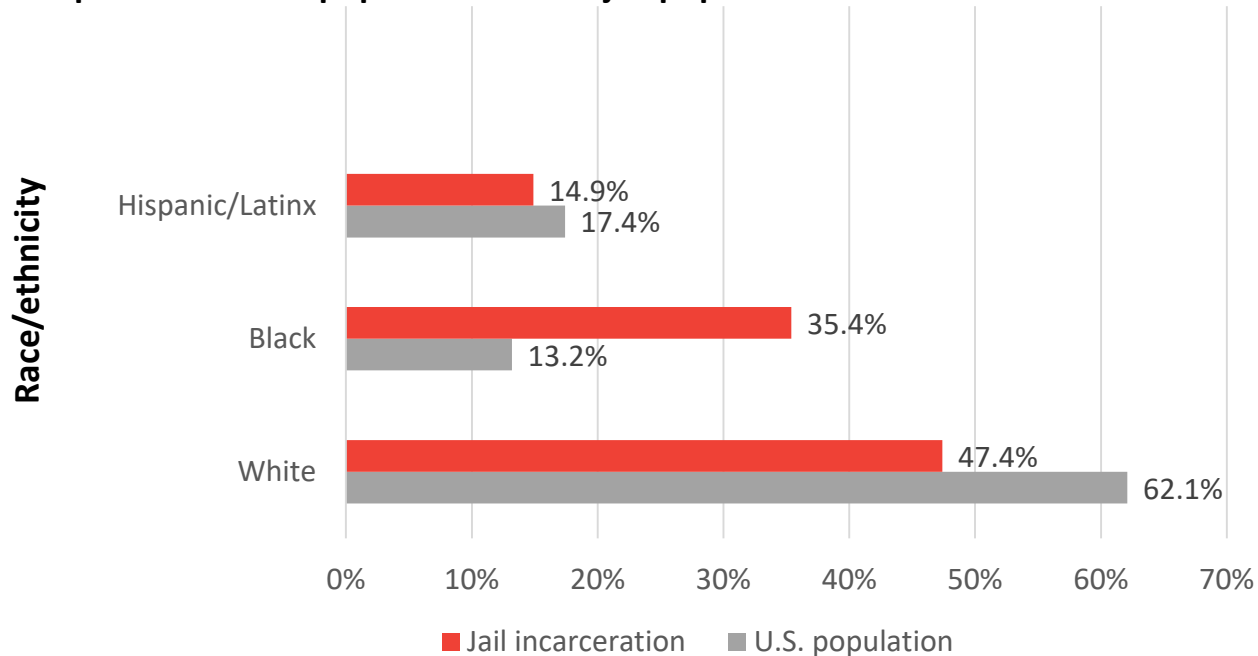
Money bail and its disproportionate impact on race and poverty

Approximately **two-thirds** of the more than 740,000 people held in locally-run jails across the United States have not been convicted of a crime—they are presumed innocent and waiting for their day in court. This “pretrial population” has grown significantly over time—increasing 433% from 82,922 to 441,790 people between 1970 and 2015. For a short overview of the national bail and pretrial detention landscape, see [“Justice Denied: The Harmful and Lasting Effects of Pretrial Detention.”](#)

Bail results in stark racial disparities

The impact of setting money bail and imposing pretrial detention is disproportionately born by Black people who are arrested. According to a [study](#) of the U.S. Bureau of Justice Statistics data, Blacks comprise only 13.2% of the overall population in the U.S. but 35.4% of the jail population.

Composition of U.S. population versus jail population



Bail results in stark racial disparities

There are two reasons for the stark racial disparities seen in the U.S. jail population:

- Black families and individuals [have less wealth](#) than their White counterparts and therefore are less able to make bail.
- Decision-makers historically have set [higher amounts of bail](#) on Black individuals than Whites, controlling for all other legal factors—such as charge, criminal history, etc.—in a case.

Bail disproportionately harms people who are poor

Consistently, studies have shown that money bail disproportionately harms poor people who are unable to afford bail. This correlation is often described as “criminalizing poverty.”

Over **40%**
of Americans would struggle to cover a
\$400 emergency expense.

Impact of unnecessary pretrial detention on life and legal outcomes

Jail is devastating to a person's life

Even as little as **two days** in jail can have so great of a destabilizing effect on a person's employment, housing, and familial responsibilities that it increases the likelihood in the future of missing court or a new arrest.

Jail is devastating to a person's life

One 2016 [study](#) of defendants who were detained because they did not post bond and defendants released on pretrial supervision found that **56%** were parents or guardians of a child. Of those parents or guardians, about **40%** indicated that being in jail has or will change the living situation for the child/children in their custody.

Jail is devastating to a person's life (cont.)

The same 2016 [study](#) also found that of those released pretrial and who had jobs prior to release, **30%** lost their jobs due to their pretrial incarceration—about half of whom lost their jobs from being held in jail for only 1-3 days before being released.

In terms of living situation, nearly 20% of participants lived in unstable housing conditions. While 39% of participants said they would live in the same arrangement after being released from jail, **25%** said they would not and **36%** were not sure.

Jail is devastating to a person's legal case

Research shows that a person detained pretrial is **18%** more likely to be convicted and receive a jail or prison sentence than someone who is released.

Jail is devastating to a person's legal case (cont.)

One [study](#) analyzed records of over 60,000 defendants arrested in Kentucky in 2009 and 2010. Compared to defendants released at some point prior to trial, defendants detained for the entire pretrial period had:



Jail is devastating to a person's legal case (cont.)

Leading up to *O'Donnell v. Texas* and Harris County misdemeanor bail reform, researchers [found](#) that in Harris County, detained defendants were more likely to commit future crimes (both felonies and misdemeanors), suggesting pretrial detention may make people more likely to re-offend in the future. Researchers also found detained defendants were:

25% more likely than similarly situated releasees to plead guilty.

43% more likely to be sentenced to jail and receive jail sentences that were more than twice as long on average.

**What results have we seen in
places that have done bail reform?**

Bail reform, crime, and public safety

In a recent [study](#), released in January 2020, researchers analyzed the new Philadelphia District Attorney's Office policy to limit requests for money bail. They found **no correlation** between a reduction in the use of money bail and any variation in failure-to-appear rates or pretrial re-arrest. Additionally, they found no increase in the crime rate in the city of Philadelphia as a result.

Examples from bail reform efforts in New Jersey, Washington DC, New Jersey, New York City, and Mecklenburg County also underscore **public safety is not adversely affected** by releasing more people pretrial.

Washington, DC underwent bail reform 30 years ago

Washington, D.C. essentially eliminated money bail in 1992. They release close to 9 out of 10 people pretrial without any money conditions. The court appearance rate is 88%. Only 2% of people are re-arrested for a new violent crime during the pretrial period.



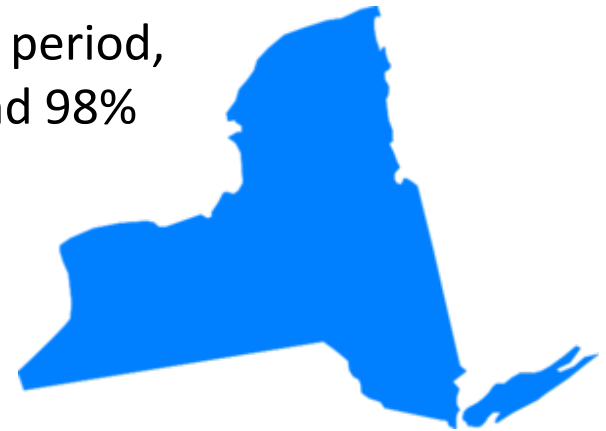
New Jersey enacted bail reform 3 years ago



[New Jersey](#) implemented a new pretrial system in 2017 that does not use money bail. Eight out of ten people are released pretrial either immediately or following a detention hearing within 3 days of arrest. The court appearance rate is almost 90%. Overall the rate of individuals charged with a “new criminal activity”—any type of offense—while released pretrial increased slightly from 24.2% in 2014 to 26.9% in 2017, but [crime](#) has dropped [significantly](#) statewide. In two years of bail reform, from 2016-2018, the state’s pretrial jail population has dropped by 29.3%.

New York City's Supervised Release program

In 1992, [New York's City's](#) jail population was 22,000 and there were 3,000 homicides that year. Today, the jail population is 7,000 and the city is on track to have fewer than 300 homicides. In recent years, judges have increasingly relied on pretrial release and supervision instead of money bail. Of the thousands of cases served by the supervised release program, 57% are felonies. The court appearance rate is 88%. During the pretrial period, 92% of all individuals have no felony re-arrest, and 98% have no violent felony re-arrest.



Mecklenburg County adopted the PSA in 2014



After six months of using the PSA, [Mecklenburg County's](#) use of money bail dropped 20.9% more than predicted, while release rates jumped 26.3%. More than 80% of people arrested before and after the PSA policy change made all their court dates and the PSA had no effect on any type of pretrial re-arrest rates.

Bail reform: Buy In Matters

Bail reform has significant potential to reduce local jail populations, but [numerous studies underscore](#) that:

- Judicial decision-makers and law enforcement must buy into bail reform for any impact on the local jail population to materialize.
- Discretion among judges, prosecutors, and magistrates in bail-setting decisions could actually maintain or *increase* the pretrial jail population unless there is buy-in for reform.

Bail reform: Drug Testing as a Condition of Supervision

A recent [study](#) of Hawaii's pretrial release program, HOPE, found that drug testing as a mandatory condition of pretrial release has no meaningful impact on pretrial outcomes such as court appearance or re-arrest.

[New York City's Supervised Release program](#), which serves thousands of individuals a year, does not mandate conditions of testing or treatment as a requisite to program participation. The court appearance rate in the program is **88%** and the pretrial re-arrest rate for any new felony charge is **8%**.

Sentencing Reform: The Need and Recent Efforts

Sentences in the US: We're #1!

- From the 1980s to 1990s jurisdictions across the country increased their sentences for all categories of crimes.
- As a result, prison populations quadrupled, to 2.2 million people incarcerated, 1.3 million in state prisons serving sentences.
- The United States has the highest percentage of incarceration by population in the world.

Sentencing results in stark racial disparities

57%

- Black and Latinx people make up 57% of the nation's prison population, but only 29% of the general population.
- Among those serving life or virtual life sentences, half are black and 15% are Latinx.

Sentencing for drug crimes

- Nearly 450,000 people are incarcerated for drug-law violations, including jails, and state and local prisons.
- About 200,000 people are in state prisons for such violations.
- There are big disparities in state practices regarding imprisonment for drug crimes: Louisiana #1 (226 people incarcerated per 100,000 residents), Oklahoma #2 (213 per 100,000), Ohio #30 (80 per 100,000), Massachusetts #50 (30 per 100,000).

Drug imprisonment and drug use rates

- If incarceration were a deterrent to drug use, states with higher rates of incarceration would have lower rates of drug use, and vice versa.
- This not the case. A [Pew Charitable Trust 2018](#) study found no relationship between drug use and drug incarceration rates.
- Higher rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths.

Recent Sentencing Reforms Impacting Nonviolent Crimes

California



- Prop 47 (2014) reclassified controlled substances for personal use from a felony to a misdemeanor
- Prop 57 (2016) allowed for good time credits and parole release for nonviolent offenses
- SB 136 (2019) repealed one-year enhancements for each prior felony incarceration, state or local

Louisiana



- SB 139 (2017)
- Reduces sentences for cocaine possession and sale
- Reduces minimum percentage of time served to be eligible for parole and good time for nonviolent and violent crimes
- Reduces minimums for a variety of crimes to align them with other states

Oklahoma



- 2016 ballot referendums changed simple drug possession from a felony to a misdemeanor, as well as changed the felony theft threshold from 500 to 1,000
- The referendum mandated that savings from this measure be directed to counties to pay for substance abuse and mental health treatment
- A 2019 law, HB 1269, made these changes retroactive, resulting in 400 commutations of sentences

Delaware



SB 49 (2019) removed enhancements for drug sentences based on:

- Geographic characteristics such as distance from a school or a park, recognizing that these enhancements discriminate against individuals from denser, urban areas
- Prior drug convictions

Caveat: Violent vs. Non-violent?

- Individuals commit violent offenses such as robbery under the influence of drugs or to support a habit.
- Distinction between “violent” and “non-violent” offenders is fluid and unhelpful when determining what assistance is needed to help someone not reoffend.
- **Recommendation:** Do not carve out violent offenses from overall sentencing reform, or from eligibility to alternatives to incarceration.

Questions?

Marta Nelson, Esq.
Senior Fellow, Strategy & New Initiatives
Vera Institute of Justice
mnelson@vera.org
(212) 376-3046